

ANALYSIS

**COMPREHENSIVE ASSESSMENT
OF THE IMPLEMENTATION
OF THE STRATEGY FOR THE
REFORM OF THE JUSTICE
SYSTEM (2017 – 2022)**

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Institute for European policy - EPI

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Editor:

Dr. Ardita Abazi Imeri

Graphic design:

Relativ

Place of publication:

Skopje, 2022

Оригинален наслов на публикацијата:

Анализа Сеопфатна оцена на спроведувањето на Стратегијата за реформа на правосудниот сектор (2017 – 2022)

Преведено од македонски на англиски јазик:

Јасна Шоптрајанова

CIP - Каталогизација во публикација
Национална и универзитетска библиотека «Св. Климент Охридски», Скопје
347.97/.99.047(497.7)“2017/2022”(047.31)

ANALYSIS [Електронски извор] : comprehensive assessment of the implementation of the strategy for the reform of the justice system (2017 – 2022) / Ardita Abazi Imeri ... [и др.] ; преведено од македонски на англиски јазик Јасна Шоптрајанова. - Текст во ПДФ формат, содржи 63 стр. - Скопје : Институт за европска политика - ЕПИ, 2022

Начин на пристапување (URL):

http://blueprint.org.mk/wp-content/uploads/2022/11/ANALYS_1.pdf. - Наслов преземен од екран. - Опис на изворот на ден 05.12.2022 год. - Фусноти кон текстот. - Превод на делото: Анализа Сеопфатна оцена на спроведувањето на Стратегијата за реформа на правосудниот сектор (2017 – 2022). - Застапени автори: Darko Avramovski, Beba Žagar, Goce Kocevski, Jelena Kadric, Tona Kareva, Uranija Pirovska, Zharko Hadji-Zafirov


ISBN 978-608-4702-66-5

1. Анализа Сеопфатна оцена на спроведувањето на Стратегијата за реформа на правосудниот сектор (2017 – 2022). англиски јазик 2. Abazi Imeri, Ardita [автор] 3. Avramovski, Darko [автор] 4. Žagar, Beba [автор] 5. Kocevski, Goce [автор] 6. Kadric, Jelena [автор] 7. Kareva, Tona [автор] 8. Pirovska, Uranija [автор] 9. Hadji-Zafirov, Zharko [автор]

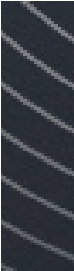
а) Правосуден систем -- Реформи -- Македонија -- 2017-2022 -- Истражувања

COBISS.MK-ID 58820101


The content is the sole responsibility of the authors and the grantee, and in no way can be considered to express the views and attitudes of the Foundation Open Society - Macedonia.



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LIST OF ABBREVIATIONS USED

| | |
|--------|--|
| ACMIS | Automatic Case Allocation System |
| AJPP | Academy for Judges and Public Prosecutors |
| ENER | Electronic National Register of Regulations of the Republic of North Macedonia |
| LFLA | Law on Free Legal Aid |
| LCP | Law on Criminal Procedure |
| LGAP | Law on General Administrative Procedure |
| LAD | Law on Administrative Disputes |
| ICT | Information and Communication Technology |
| CC | Criminal Code |
| RNM | Republic of North Macedonia |
| CPPRNM | Council of Public Prosecutors of the Republic of North Macedonia |
| JCRNM | Judicial Council of the Republic of North Macedonia |



EXECUTIVE SUMMARY

The period planned for the implementation of the Judicial Reform Strategy (the Strategy) started in 2017 and ends in 2022. The Blueprint Group regularly monitored the implementation of the Strategy in the past years and this year, and actively produced analyses, reports and other documents that presented the findings of the monitoring to the public and brought the reform process in the justice sector closer to the citizens. The Analysis for the Comprehensive Assessment of the Implementation of the Strategy (the Analysis) aims to provide a comprehensive and independent assessment of this process and offer recommendations based on the findings, which could be incorporated into the next Judicial Reform Strategy.

In the first part of the Analysis, a review is made of the strategic goals of the reform in the judiciary: independence and impartiality; quality; liability; efficiency; transparency and access to justice; and findings regarding special judicial institutions not covered in previous sections.

In the area of independence and impartiality, it should be noted that a new Law on managing the case flow in the courts was prepared and adopted, and the implementation of the process of digitalization in the judiciary began in the past year. However, the problem with the independence of the court budget remained unresolved, and besides, the text of the new Court Rules of Procedure has not been finalized.

Regarding the measures from the Strategy related to quality, the part of them dedicated to the unification of judicial practice was implemented continuously during the entire period in question and court decisions are published on the judicial web portal sud.mk. On the one hand, the measure for clear and reasoned decisions of the Judicial Council of the Republic of North Macedonia (JCRNM) for the selection and promotion of judges has been met, and on the other hand, the Council of Public Prosecutors of the Republic of North Macedonia (CPRNM) continues the trend to fail to publish on its website the decisions on the selection and promotion of public prosecutors, as well as other decisions it brought. The key challenge faced by the probation system is the very small number of cases, but in 2021 there was progress with the adoption of a special Strategy for the Development of the Probation Service (2021-2025). Since the adoption of the Strategy, no significant actions have been taken to improve the situation with human resources in the judiciary.

Despite the fact that in 2019, for the first time, judges were given the opportunity to directly submit a request for the initiation of a procedure for disciplinary responsibility of a member of the JCRNM whom they elected, so far no request has been submitted for the initiation of such a procedure. With the legal amendments adopted, the overall responsibility for the liability of the judges and the presidents of the courts was transferred, as before, to the JCRNM. As for the liability of the public prosecutors, it is necessary to note that when deciding on a certain disciplinary case, CPRNM previously excludes the public from it, adopting a decision, so for those reasons there is no possibility to monitor the entire procedure.

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The measure for monitoring the efficiency of the judiciary is directly related to the establishment of the Centre for Information-Communication Technology, Analytics and Statistics, but it has not been implemented. With the proposed amendments to the relevant laws, equality of employees in the private and public sectors is achieved by establishing the same amount of legal minimum salary and gradually harmonizing the other salaries of judicial servants and public prosecutor officials at all levels, as well as ensuring the continuity of the changes of salaries in the judicial administration and in the public prosecutor's administration in relation to the minimum wage at the national level. However, the proposed changes have not yet been adopted.

The measure to establish clear criteria, rules and procedures for the public at the meetings of the JCRNM was formally fulfilled in May 2019. A positive change in the way of work of the JCRNM after the adoption of the new law is the modality for reporting on the election, promotion and dismissal of judges and presidents of courts, as well as the decisions on determining disciplinary responsibility. The revision of the Methodology for Court Statistics in terms of the form for the annual work reports, can be considered fulfilled, because the JCRNM has already established a practice of uniform reports on the work of the courts for a long time. CPPRNM publishes the dates for its sessions on its website in a timely manner, but the non-transparent announcement of the budget of CPPRNM is a reason for concern.

In the area of access to justice, progress can be noted in the preparation of the relevant laws, although there is also a delay in relation to the deadlines set in the Action Plan of the Strategy.

It is evident that there is no progress in the establishment of investigative centres in the public prosecutor's offices; the system for electronic distribution of cases in the public prosecutor's offices has not been established and is not applied, and the retirement of 10 public prosecutors as of June 30, 2022 also negatively affects the efficient operation of the public prosecutor's office.

In the second part, the findings regarding the reforms in special legal spheres (criminal law area, administrative law area and civil law area) are reviewed.

The relevant laws from the criminal law area are in different stages of preparation, whereby deviations from the deadlines specified in the Strategy can be observed. However, because of the complexity of these laws and the need to meet the quality criterion, it is clear why more time is needed for their adoption. In the administrative law area, development has been observed following the innovations introduced by the Law on Administrative Disputes (LAD) of 2019, although non-compliance with the Law on General Administrative Procedure (LGAP) remains a burning problem. The strategy envisaged a comprehensive legislative reform in the field of civil-substantive law. The preparation of the relevant laws in this area has started, but several of them have been stalled in the process.

A general assessment of the implementation of the Strategy could be that the foreseen measures have been partially implemented, with varying degrees of progress in certain areas. However, it is necessary to emphasize that there are still many steps ahead until the fulfilment of the strategic goals of the state, which will be foreseen in the next strategy for the reform of the justice sector. The recommendations established on the basis of the findings of each part of this Analysis move in that direction, which should serve as a contribution to the Blueprint Group and a guide for the tendencies that should be followed in the preparation of the new strategy.

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Subject, goals and purpose of the Analysis

In 2022, the Strategy entered the last year of the planned period for its implementation. This year is the right moment to summarize the research of the Blueprint Group from the monitoring of the implementation of the Strategy in the past years and this year, as well as to give recommendations based on that knowledge, which will contribute to the planning of activities and measures in the next strategy .

In addition to the intensive legislative activity in the past years, the processes of drafting and adopting certain legal solutions have not yet been completed in their entirety. The reasons for this state of affairs can be partly attributed to the covid-19 pandemic, which changed the government's priorities and slowed down the dynamics of the overall reform processes, but the very nature of the laws (e.g. CC or LCP) played a significant role in the delay. which requires a particularly careful approach when it comes to any amendments.

During the entire period of implementation of the Strategy, work was done on drafting and adopting regulations (laws and other acts), as well as implementing non-regulatory measures (e.g. drafting strategic documents, strengthening human and technical capacities, etc.). Although there has been significant progress in the preparation of legal texts adopted by the Government and submitted to the Parliament, unfortunately, the procedure for their adoption has almost completely stopped. On the other hand, the actions of judicial institutions in specific cases of public interest, although unrelated in any way to the implementation of the Strategy, caused significant negative reactions among the professional and general public, which negatively affected the confidence of citizens in the reform processes, and in general in the judiciary.

This Analysis provides a comprehensive and independent evaluation of the process of implementing the measures and activities planned in the Strategy for the entire planned period for its implementation, through the lenses of civil organizations that monitor the situation in the judiciary for quite some time. In addition to this, according to the identified shortcomings of the Strategy during its application, the Analysis will also offer recommendations for better planning and implementation of the next strategy, which is also its goal. The analysis assesses whether the implementation of the Strategy is timely, transparent and inclusive, whether the adopted laws and measures are able to contribute to the achievement of the goals for which they were planned, and analyses the impact of the reforms on respect for human rights, the realization of the principle of the rule of law and social justice in general.

The purpose of the Analysis is to give an assessment of the degree of implementation of the measures and activities from the Strategy and an assessment of the effectiveness of the implemented measures to achieve the strategic goals of the reform process. The recommendations and conclusions of this Analysis can be used in the process of creating a new strategic document in which the reform processes will be planned in the next period.

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Methodological approach

The main research objective of the Analysis is to offer a comprehensive and independent analysis of the process for the implementation of the Strategy for the entire period for which it was foreseen. When preparing the new strategy for reforms in the justice sector, it is necessary to make an assessment of the implementation of the currently applicable Strategy and to draw conclusions about what has been missed, which are the main challenges in implementation and to give key recommendations that should be reflected in the new strategy. The specific research objectives are:

1. To determine whether the implementation of the Strategy is timely, transparent and inclusive;
2. To analyse whether the adopted laws and measures taken are able to contribute to the achievement of the goals for which they were planned;
3. To assess the impact of the reforms on the respect of human rights and the enforcement of the rule of law principle; and
4. To provide recommendations for the next reform strategy.

The subject of the Analysis are all the activities and measures provided for in the Action Plan for the implementation of the Strategy, which the Government of Republic of North Macedonia, the Ministry of Justice and other judicial authorities have implemented or should have implemented for the entire period for which the Strategy was foreseen. The measures are marked with the following colours: red if the measure has not been implemented, yellow if the measure has been partially implemented and green if the measure has been implemented, and at the end of each section there is a visual display of the degree of realization of the measures.

The collection of data was carried out through desk research of regulations, documents, available analyses and reports, especially the reports of the Blueprint Group for monitoring the Strategy from the past years, as well as sending requests for free access to information of a public nature where it is necessary and immediate observation from participation in the work of working groups. Data analysis is performed through a framework of indicators, which includes indicators for: timeliness, inclusiveness, transparency, quality and respect for human rights.

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About the Blueprint Group for reforms in justice

The Blueprint Group for judicial reform is an informal network of civil society organizations, which in the past years work and act in the field of justice. Members of the group are: Macedonian Young Lawyers Association, European Policy Institute, Institute for Human Rights, Coalition All for Fair Trial, Helsinki Committee for Human Rights, Centre for Legal Research and Analysis and Open Society Foundation - Macedonia.

This Analysis is an activity of the Project "For Justice" – civil society contribution to the advancement of justice, coordinated by the European Policy Institute - EPI Skopje and financially supported by the Open Society Foundation - Macedonia. The project aims to increase the influence of civil society organizations in the process of reforms in the judiciary as a prerequisite for the protection of human rights and ensuring social justice. Special objectives of the project are:

1. Strengthening the process of monitoring the implementation of the Strategy with a focus on its impact on the protection of human rights and ensuring social justice, as well as a contribution to the preparation of the future strategy for the justice sector,
2. Promotion of participatory policy-making in the field of justice, using an inter-sectorial approach and cooperation with thematic networks and other civil society organizations and
3. Strengthening of activities for evidence-based advocacy in the field of justice by civil society organizations.



Analysis roadmap

The findings of the research conducted, on each individual measure are grouped and presented following the structure established in the Strategy and Action Plan. The first part presents the findings for each of the strategic objectives of the Strategy (independence and impartiality; quality; responsibility; efficiency; transparency and access to justice), as well as the findings regarding the special judicial institutions (courts; JCRNM; public prosecution; CPPRNM), which are not covered in the previous sections. In each of the sections in which the objectives are analysed, there is a separate segment for recommendations for the next strategy. The second part presents the findings regarding the reforms in the special legal spheres (criminal law area, administrative law area and civil law area). Just like before, after each area, there are recommendations for the next strategy. Conclusions are given after the findings.

**FINDINGS of
the monitoring**

PART 1: STRATEGIC OBJECTIVES OF THE JUDICIAL REFORM

1. INDEPENDENCE AND IMPARTIALITY

Proper functioning of the automatic case allocation system (ACMIS) (Measures 2.1.5 -1 and -2)

The strategy foresees overcoming the possibilities of misuses in the system for electronic distribution of cases through: establishing a body for evaluating the use of ACMIS, conducting procedures for examining the ways of its use and amending the Law on Managing the Case Flow in Courts (2.1.5.-1), as well as conducting regular annual audits on the functioning of ACMIS by independent auditors (2.1.5.-2).

The inconsistency in the functioning and use of ACMIS was determined by the ad hoc Working Group for the evaluation of the use of ACMIS which was established by the Minister of Justice in 2017. The report of the Working Group after the supervision carried out in several courts, found inconsistent application of the Law on Managing the Case Flow in Courts which lead to improper use of the ACMIS. Therefore, in its report, the Working Group proposed 4 (four) urgent measures that need to be addressed in order to overcome the identified inconsistencies and irregularities.

Pursuant to the pledges in the Strategy, in November 2018 the Ministry of Justice established a Working Group to draft a new Law on Management of Flow of Cases in Courts. The law was adopted on 16 February 2020, and its application was postponed to a date three months from the date the law entered into force. The new law foresees that every president of court should establish a working body for management of flow of cases within the court and the function is regulated in concise legal provisions related to the work of this body; it also prescribed mandatory use of the ACMIS for the case flow within the courts from the day of the receipt of the documents in the court to the day of final completion and archiving of cases, and also to prevent further movement of cases without the data on it being entered completely in the system.

As in previous years, according to reports, as part of the operation of ACMIS, there are regular annual audits of the operation of ACMIS, in line with the Strategy, using independent auditors. On this basis, in line with the annual plan of working, annual reports are produced as well.

Despite certain deviations from the planned deadlines, which is a frequent occurrence in the implementation of the Action Plan, the measure to overcome potential interference by amending the LMFCC is noted as implemented.

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• PROCESS OF DIGITALIZATION IN THE JUDICIARY

The process of digitalization in the judiciary is implemented in the past 12 months through the Council for Coordination of Information and Communication Technology in the Justice System Bodies – ICT Council within the framework of the Ministry of Justice.

In 2022, the ICT Council held 6 sessions in the period January-June, reviewing the activities related to the process of digitalization and enacting guidelines for efficient and effective implementation of the process on digitalization.

During the period January-June 2022 the following activities related to the process of digitalization within the judiciary were carried out:

1. The ICT Council finalized the process of consultations, and interoperability agreements were signed between the Ministry of Justice with 9 state bodies and institutions - Ministry of the Interior, Customs Administration, Directorate for Financial Police, Directorate for Financial Intelligence, Agency for Civil Aviation M-NAV, Central Register, Agency for National Security, Public Prosecutor's Office and State Election Committee.
2. In cooperation with the OSCE Mission in Skopje, equipment for online trials was installed in five courtrooms in the basic courts in Strumica, Stip, Kavadarci, Skopje 1 and Skopje 2.
3. With the assistance provided by the US Embassy, a team of experts produced a report on the situation and preparedness of courts for the process of digitalization, which should be the starting point for implementation of the process of digitalization in courts in Republic of North Macedonia.
4. Procurement of new servers for the courts in Republic of North Macedonia was carried out by the Supreme Court of RNM to replace the existing servers that were procured in the period 2006-2010.
5. A digital service of issuance of certificates from the penal records was provided for natural and legal persons, and it is available on the national portal uslugi.gov.mk.
6. The process to produce software for publishing of decisions and public calls on the web-site of the court, in line with article 12 of the Law on Management of Flow of Cases, with a proposed conclusion about the value of compensation.
7. Activities were running in continuity regarding the process of digitalization and issuance of electronic court orders to use special investigative measures of interception and recording of telephone and other electronic communications in cooperation with the Operative Technical Agency in 6 basic courts and 7 basic public prosecutor's offices.
8. The European Summit on Digitalization Ohrid 2022 took place on 12-14 June 2022, organized by the ICT Council, the Ministry of Justice, AJPP and the Association of Criminal Law and Criminology. The Summit was attended by 156 participants and panellists who shared experiences from their countries and from the European Court of Human Rights.

The process of digitalization of judiciary is carried out in a partially transparent and inclusive manner. This is obvious from the fact that there is no transparency in the reporting about the process and steps that are taken. The partial inclusiveness is due to the fact that the entire process has excluded the associations of citizens that are directly involved in the judiciary reform.

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Autonomous and sustainable court budget (Measures 2.1.6-1 and 2)

The implementation of the Law on Court Budget, regarding the provision of the legally prescribed minimum of 0,8% is still a serious problem that has a direct impact on the independence of the judicial power. Despite the fact that this problem is noted as a fundamental anomaly that creates imbalance between the judicial power on the one hand and the executive supported by the legislative power, still, the two last governments, year after year exhibit blatant disrespect for the Law on Court Budget, by not providing the legally prescribed minimum, as a basic prerequisite to attain complete independence of the judicial power.

Overcoming this situation is foreseen in the Strategy, through the strategic orientation to establish autonomous and sustainable court budget, consistent with the legally determined 0,8% of the gross domestic product, in line with the Law on Court Budget (2.1.6). The measures defined foresee an analysis of the possibilities for consistent application of the Law on Court Budget and improving its application on an annual level.

When considering the indicator for success of the measure to improve the situation with the application of the Law on Court Budget, it could be concluded that there was not even an attempt to implement this measure from the Strategy. We arrived at this conclusion based on the fact that the court budget for 2019 was 0,29%, instead of being 0,6% of GDP, while for 2021 instead of 0,8%, it amounted to 0,39% while the amount for 2022 is 0,3%.

Therefore, we would like to stress that this measure from the Strategy was not implemented in any period of Strategy's implementation.

Producing a new Court Rules of Procedure (Measures 2.1.5-1)

The Minister of Justice, using his competences, established the working group to produce new Court Rules of Procedure. The working group met on an ongoing basis over the past period, via online meetings, and thus produced the text of Court Rules of Procedure that is still not finalized, because it depends directly on provisions in several procedural laws, which are currently amended. Namely, it is expected that certain provisions, particularly those related to digitalization of the judiciary, will be established in the Court Rules of Procedure after the adoption of the LCP and the Law on Litigation.

The working group to produce the Court Rules of Procedure was composed of representatives of all relevant institutions, including also representatives of the civil sector. The entire process was completely inclusive, and regarding specific parts regulated by the Courts Rules of Procedure, experts in specific areas participated in the working group. Regarding deadlines for drafting of this regulation, it is obvious that they have been extended, primarily due to the wait to adopt the other procedural laws. The goals of the amending have been achieved through the provisions in the working version of the Court Rules of Procedure and are related to further detailing of the existing provisions, in order to facilitate the exercise of right and responsibilities of court instances in Republic of North Macedonia.

At the end of December 2021, the Supreme Court adopted the Rules of Procedure of the Supreme Court of Republic of North Macedonia, which replaced the Rules of Procedure from 1998. With the new Rules of Procedure, the Supreme Court of Republic of North Macedonia is establishing new modalities for work and organization.

Recommendations

- The new strategy needs to foresee a framework in which The Law on Managing the Case Flow in Courts will be implemented, and through which it will be visible in which segment there are difficulties in the implementation of the Law. This framework needs to be adopted as a tool for practical implementation of the Law, without intervening in the Law itself.
- Following the reports of the ICT Council, it is obvious that the process of digitalization is still in an early stage. This can be seen from the conditions of the court buildings where necessary prerequisites for digitalization need to be established. The new strategy needs to provide the necessary funds for full implementation of digitalization in the courts, but also to secure prerequisites for parties and other participants (public prosecutor's office, state attorney's office, citizens, attorneys, notaries, enforcement agents, mediators and others) to communicate electronically, as part of the digitalization of courts.
- It is necessary to increase the level of transparency and inclusiveness of the process of digitalization, especially of associations of citizens and institutions that are not involved in the process, in order to secure all available capacities for more efficient and more effective way of implementation of the process.
- The new strategy should establish a trilateral communication between the authorities in Republic of North Macedonia, since the securing of the legally prescribed amount of the court budget is within the competencies of both the judicial and of the executive and the legislative power. This cooperation is crucial to secure the legally prescribed percentage of GDP as the annual court budget, since the attempts to implement the Law on Court Budget have not been successful thus far. Securing the court budget is necessary for normal operation of the judiciary, especially in terms of securing human resources, which are at a critically low level.
- It is necessary to adopt the new Rules of Procedure, by the Minister of Justice and to establish a timeframe, with a transition period, for the application of the new development foreseen in the new Court Rules of Procedure.

2. QUALITY

■ Harmonizing the judicial practice (Measures: 2.2.1-1 and -2)

Some of the measures in the Strategy, dedicated to harmonization of judicial practice were implemented on an ongoing basis throughout the entire recent period.

Regarding publication of court decisions, this process is running smoothly and all court decisions are published on the court web portal sud.mk, but the process itself is not structured so that the decisions could be assessed in a user-friendly way. This is due to the fact that there is no possibility to quickly and precisely find a specific court practice, nor is there a methodology to highlight the key decisions for the creation of judicial practice.

Harmonization of judicial practice continued with the same intensity since 2017, with no exception during the period of COVID 19. The working meetings for harmonization of judicial practice are taking place at least once a year between the 4 appellate courts and the Supreme Court of Republic of North Macedonia. The last meeting took place at the beginning of June 2022. The minutes and conclusions of meetings are sent regularly to lower courts and are published on the web-site of AJPP, as an organizer of the meeting. Financial support for organization of such meetings comes from foreign assistance and implementation of projects, which is how the civil sector is included in the meetings.

- **ELABORATING AND PUBLISHING DECISIONS OF JCRNM AND CPPRNM ON PROMOTION OF JUDGES AND PUBLIC PROSECUTORS (MEASURE: 2.2.3-2)**

■ a. JCRNM

The new Law on JCRNM¹, as well as the adoption of several secondary legislation items that were produced with assistance of external experts, fulfilled the measure on clear and elaborated decisions for election and promotion of judges. Despite the fact the adoption of these secondary legislation items and documents was delayed, they are crucial for the application of the new law, and for exercise of the competences of JCRNM aiming at increasing its efficiency and effectiveness, greater transparency and accountability for its work.

Namely, the Law on JCRNM, of 2019, provides that for any promotion of judges it is necessary to evaluate the judges, in line with the new modalities of evaluation. Prerequisites for this were created in the first half of 2022, with the implementing (secondary) legislation regulating the new modalities for evaluation of judges and of presidents of courts, as well as to establish committees for insight and evaluation of judges and presidents of courts, for the basic and appellate courts and for the Administrative Court. To be able to fully assess the decisions, it is necessary to see how these secondary legislation items are implemented in practice and to promote the judges.

It can be concluded that JCRNM devoted a lot of time to preparatory activities for the implementation of evaluation of judges and of presidents of courts, which is understandable, having in mind that the process of evaluation is complex and complicated.

¹ Law on Judicial Council of RNM, ("Official Gazette of the Republic of North Macedonia" 6p.102/2019)

But, on the other hand, this had a negative impact on the promotion of judges who answered calls published more than a year ago, regarding which the procedure was initiated, and is still not fully carried out.

The secondary legislation items did not establish a specific format of the decisions for election and promotion of judges, but their content is, in a way, determined in several rulebooks. Pursuant to this, every decision for election and promotion should indicate the criteria that make the elected or promoted judge stand out among other candidates, or to indicate the points received by each of the candidates elected as a judge in basic court, or promoted to a higher court.

With regards to the contents of the decisions for election of presidents of courts, there are no major changes in the decisions, compared to the decisions written before the legislative amendments.

One of the more significant legal amendments entails communicating the decisions for election of judges and presidents of courts and promotion of judges to all candidates. The candidate who was not elected as a judge has the right to appeal, within eight days from the receipt of information, to the Appellate Council attached to the Supreme Court of Republic of North Macedonia.² The information on the candidate elected as judge/president of court are published immediately after the session has taken place, on the web-site of JCRNM, and the decisions are published after they become final.

In 2018-2022 the following elections/promotions of judges and elections of presidents of courts as well as removal of judges as follows:

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| 2018 | <ul style="list-style-type: none">» 4 judges elected/promoted to higher courts as follows: to Appellate Court Skopje – 1 judge, to the High Administrative Court – 1 judge, to the Administrative Court – 2 judges.» 12 judges temporarily seconded to other courts, for not more than one year, as follows:<ul style="list-style-type: none">- 1 judge from BC Kocani to BC Berovo;- 2 judge from BC Strumica to BC Berovo;- 2 judge from BC Kocani to BC Delcevo;- 1 judge from BC Radovis to BC Sveti Nikole;- 1 judge from BC Skopje 1 Skopje to BC Gostivar;- 1 judge from BC Struga to BC Ohrid;- 1 judge from BC Prilep to BC Krusevo;- 1 judge from BC Tetovo to BC Skopje 2 Skopje;- 1 judge from BC Kumanovo to BC Skopje 2 Skopje;- 1 judge from BC Kriva Palanka to BC Skopje 2 Skopje» Termination of judicial office based on other grounds foreseen by law, as follows:<ul style="list-style-type: none">- for 21 judges, termination of judicial office because they turned 64 years of age.- for 2 judges termination of judicial office because of death.- for 2 judges termination of judicial office upon their own request |
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² Article 49 paragraph 5 of LJCRNM ("Official Gazette of the Republic of North Macedonia" no. 102/2019)

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| 2019 | <ul style="list-style-type: none"> » 3 judges elected/promoted to higher courts as follows: the Supreme Court- 1 judge, and to the Administrative Court – 2 judges » A total of 14 elected presidents of courts, as follows: High Administrative Court, Basic Court Berovo, Basic Court Krusevo, Basic Civil Court Skopje, Basic Court Bitola, Basic Court Veles, Basic Court Delcevo, Basic Court Kicevo, Basic Court Kriva Palanka, Basic Court Negotino, Basic Court Prilep, Basic Court Stip, Basic Court Kavadarci and Basic Court Struga. » A total of 5 judges have been temporarily seconded to another court for not more than one year, as follows: <ul style="list-style-type: none"> - 1 judge from BC Kumanovo to Basic Criminal Court Skopje; - 1 judge from BC Stip to BC Vinica; - 1 judge from BC Prilep to BC Krusevo; - 1 judge from BC Kocani to BC Delcevo; - 1 judge from BC Strumica to BC Berovo; » A total of 4 (four) judges were removed due to unprofessional performance and dereliction of judicial duty as follows: <ul style="list-style-type: none"> - 3 (three) judges in procedures initiated in 2017 and - 1 (one) judge in a procedure initiated in 2019. » Termination of the judicial office on other grounds foreseen in the law, as follows: <ul style="list-style-type: none"> - for 12 judges termination of judicial office was established because they met the conditions for old-age retirement. - for 1 judge termination of judicial office was established because of death. - for 1 judge termination of judicial office because of unprofessional performance and dereliction of judicial duty, a procedure that was concluded with an enforceable decision in February 2019. |
| 2020 (the year when the implementation of new Law on JCRNM of 2019 begun) | <ul style="list-style-type: none"> » A total of 24 judges elected/promoted as follows: to the Supreme Court of RNM – 4 judges, Appellate Court Skopje - 6 judges, Basic Civil Court Skopje – 3 judges, Basic Criminal Court Skopje - 3 judges, Basic Court Bitola 1- judge, Basic Court Kavadarci 1 - judge, Basic Court Kumanovo - 2 judges, Basic Court Ohrid – 1 judge, Basic Court Sveti Nikole - 1 judge, Basic Court Tetovo - 1 judge and Basic Court Stip -1 judge. » A total of 8 presidents of courts are elected as follows: Appellate court Bitola, Appellate court Gostivar, Appellate court Stip, Basic Court Radovis, Basic Court Strumica, Basic Court Kocani, Basic Court Ohrid and Basic Court Kratovo. » A total of 13 judges were temporarily seconded to another court for not more than one year, as follows: <ul style="list-style-type: none"> - 3 (three) judges from AC Bitola to AC Skopje; - 3 (three) judges from AC Gostivar to AC Skopje; - 1(one) judge from BC Stip to BC Berovo; - 1(one) judge from BC Kocani to BC Vinica - 1(one) judge from BC Bitola to BC Krusevo; - 1 (one) judge from BC Kocani to BC Delcevo; - 1(one) judge from BC Veles to BC Negotino; - 2 (two) judges од BC Strumica to BC Berovo (one judge for a period from 01.03.2020 to 31.08.2020 and one judge for the period from 01.09.2020 to 31.08.2021); » 1 (one) judge was given a written reprimand, for established disciplinary liability. » A total of 5 judges were removed due to unprofessional and performance of the judicial office and judicial misconduct, as follows: <ul style="list-style-type: none"> - 2 (two) judges for procedures initiated in 2019 and - 3 (three) judges for procedures initiated in 2018. » Termination of judicial office on other grounds prescribed in the law, as follows: <ul style="list-style-type: none"> - for 7 (seven) judges a termination of judicial office was established because they met the conditions for old-age retirement. - for 1 (one) judge a termination of judicial office because of death. - for 3 (three) judges, termination of judicial office upon their own request. |

2021
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- » A total of 6 (six) judges were elected to the basic courts, as follows: to Basic Civil Court Skopje – 3 judges and 3 judges to Basic Criminal Court Skopje.
- » A total of 6 presidents of courts were elected, as follows to: Supreme Court of RNM, Administrative Court, Basic Court Gevgelija, Basic Court Gostivar, Basic Court Debar and Basic Court Sveti Nikole.
- » A total of 10 judges were temporarily seconded to another court for not more than one year, as follows:
 - 1 judge from BC Veles to BC Negotino;
 - 1 judge from BC Kocani to BC Delcevo;
 - 1 judge from BC Veles to BC Kavadarci;
 - 1 judge from BC Tetovo to Basic Criminal Court Skopje;
 - 1 judge from BC Strumica to BC Berovo;
 - 1 judge from BC Prilep to BC Krusevo;
 - 1 judge from Basic Criminal Court Skopje to BC Kumanovo;
 - 1 judge from Basic Civil Court Skopje to BC Berovo;
 - 1 judge from BC Kocani to BC Vinica;
 - 1 judge from BC Bitola to BC Krusevo;
- » 1 (one) judge from Basic Court Negotino was issued a written reprimand, for established disciplinary responsibility
- » A total of 7 (seven) judges were removed (five judges on the grounds of unprofessional performance and dereliction of duty in performing the judicial office and two judges on the grounds of severe disciplinary offence), as follows:
 - 1 (one) judge of Basic Criminal Court Skopje for a procedure initiated in 2018,
 - 1 (one) judge of the Supreme Court of RNM for a procedure initiated in 2019
 - 2 (two) judges of Basic Criminal Court Skopje for procedures initiated in 2020
 - 1 (one) judge of the Supreme Court of RNM for a procedure initiated in 2020
 - 2 (two) judges of Appellate court Stip for procedures initiated in 2021.
- » During 2021, terminations of judicial office were established on other grounds, as follows:
 - For eight judges a termination of judicial office was established because they meet the requirements for old-age retirement.
 - For four judges termination of judicial office was established because of their death.
 - For eight judges the judicial office was terminated upon their own motion.

b. CPPRNM

The work of CPPRNM was followed through monitoring of the sessions of CPPRNM. In terms of implementing the Action Plan as a part of the Strategy it was concluded that last year, too, the trend continued, with CPPRNM failing to publish on its web-site³ decisions on election and promotion of public prosecutors, as well as other decisions it adopted. With regards to the modalities for election of public prosecutors, the practice continued, electing them without discussion, i.e., by just voting FOR and AGAINST.

Personnel and technical equipping, accompanied by securing adequate premises for the AJPP (Measure 2.2.8-1 and -2)

³ <http://sjorm.gov.mk/>

The personnel and technical equipping, as well as securing adequate premises, as established in the Strategy⁴, is of outstanding importance for improved quality of trainings implemented by the AJPP. The report of the TAIEX peer review mission⁵, also establishes, as a general recommendation, the need to improve the spatial conditions of AJPP, primarily the trainings spaces, but also upgrading the personnel levels and increasing the budget. The need to strengthen the capacities of AJPP, particularly improving the budget and autonomy of AJPP was also established in the Plan of Activities to implement the urgent reform priorities.⁶

Despite the need to secure adequate premises for the AJPP established in the Strategy, such premises have not been provided yet.

| Year | Number of staff in AJPP |
|------|-------------------------|
| 2018 | 17 |
| 2019 | 20 |
| 2020 | 22 |
| 2021 | 23 |
| 2022 | 23 |

With regards to upgrading personnel levels, in the five recent years there is a small increase of the number of staff with permanent employment or with short-term contract in AJPP, but it can be concluded that the numbers are still far from those envisaged in the presently applicable Rules on Systematization of Jobs, which foresees 50 jobs.⁷

| Year | Budget of AJPP in MK denars |
|------|-----------------------------|
| 2018 | 72.804.000,00 |
| 2019 | 70.283.000,00 |
| 2020 | 75.000.000,00 |
| 2021 | 72.200.000,00 |
| 2022 | 131.793.000,00 |

Regarding the budget approved for AJPP, over the past five years there is fluctuation of the amounts approved on the annual level, while in 2022 there is significant increase in the approved annual budget because the eight generation of trainees was enrolled at the AJPP.⁸

4 Strategy on Judicial Reform 2017-2022 , with Action Plan, available at https://www.pravda.gov.mk/Upload/Documents/Strategija%20i%20akciski%20plan_MK-web.pdf

5 Report of the TAIEX peer-review mission on training of judges and public prosecutors in the Republic of Macedonia, judge Lennart Johansson and judge Dragomir Jordanov, (not published)

6 Activities plan for implementation of urgent reform priorities 2015 (working document), <https://www.sep.gov.mk/post/?id=862>

7 Data received from the following sources: Annul Report of the Academy for Judges and Public Prosecutors for 2020, <https://jpacademy.gov.mk/wp-content/uploads/2021/05/godishen-izveshtaj-2020.pdf>; Response to request for free access to public information, 02.02.2022 година, Academy for Judges and Public Prosecutors; Response to request for free access to public information, , 26.08.2022, Academy for Judges and Public Prosecutors.

8 Data received from the following sources: Functional analysis of AJPP, November 2019, Center for Legal Researches and Analyses, <https://cpia.mk/wp-content/uploads/2021/10/11.pdf>, page.37; Annual Report of the Academy for Judges and Public Prosecutors for 2020, <https://jpacademy.gov.mk/wp-content/uploads/2021/05/godishen-izveshtaj-2020.pdf>; Budget 2021, Ministry of Finance, <https://finance.gov.mk/budget2021/>; Response to request for free access to public information, 22.08.2022, Academy for Judges and Public Prosecutors.

1. ADOPTING THE LEGAL AMENDMENTS

A. TIMEFRAME TO ADOPT THE AMENDMENTS

| Time period | Development stage |
|---------------|---|
| November 2017 | Established working group to develop the amendments |
| January 2018 | Draft amendments were published on ENER |
| July 2018 | Amendments were endorsed by the Government and sent to the Parliament |
| August 2018 | The Parliament adopted the amendments to The Law on AJPP |

The legal amendments adopted on 29 August 2018⁹, went past the deadline established in the Action Plan to the Strategy, according to which these amendments were planned for adoption in January 2018.

B. TRANSPARENCY AND INCLUSIVENESS OF THE PROCESS OF ADOPTING THE AMENDMENTS

Two comments were published on ENER regarding these amendments, while comments were also submitted by civil society organizations to the Ministry of Justice.¹⁰ The comments of European Policy Institute and Human Rights Institute and Macedonian Young Lawyers Association regarding the draft amendments were accepted. No public debates were organized regarding these amendments.

C. AIM OF THE AMENDMENTS

The aim of the amendments was to address certain inconsistencies regarding the managerial and steering bodies, and they additionally introduced changes to the criteria for admission to AJPP.

D. IMPLEMENTATION OF THE LAW ON AJPP¹¹

In November 2018, Natasha Gaber Damjanovska was elected as a director, and in April 2021, after more than two years from the adoption of amendments to the Law amending the The Law on AJPP,¹² judge Ilir Iseni was elected as the deputy director of AJPP.¹³ The steering committee of AJPP, at a session that took place on 14.7.2022, took a decision to open a public call for election of director of AJPP.¹⁴ At a session of the Steering Committee which took place on 30.8.2022, the candidates who answered the call for the position of a director did not receive sufficient number of votes, and the elections were unsuccessful. Therefore, the current director will perform the office until November, until the end of her term, and on its next session, the Steering Committee will publish a new call for election of a director.¹⁵

9 Official Gazette of Republic of Macedonia, No. 163/2018 of 04.09.2018

10 European Policy Institute, Institute for Human Rights, "Comments to the Draft Law Amending the Law on Judicial Council of RM and the Law on the Academy for Judges and Public Prosecutors".

11 Official Gazette of RM, No. 20/2015, 192/2015; 231/2015; 163/2018;

12 Official Gazette of RM, No. 163/2018, 04.09.2018

13 Judicial Council of Republic of North Macedonia, "Announcement from the 369th session of the Judicial Council of RNM – 12.04.2021" (12 April 2021), shorturl.at/jA169.

14 Official Gazette of Republic of North Macedonia No. 160/2022, 15.07.2022

15 FIVE MEMBERS OF STEERING COMMITTEE OF THE ACADEMY FOR JUDGES AND PROSECUTORS THWARTED THE ELECTION FOR DIRECTOR, DID NOT SAY WHY THEY DID NOT VOTE FOR THE CANDIDATES, August 2022 година, https://sdk.mk/index.php/makedonija/petmina-chlenovi-na-upravniot-odbor-na-akademijata-za-sudii-i-obviniteli-go-turnaa-izborot-na-direktor-ne-kazhaa-zoshto-ne-glasaat-za-kandidatite/?fbclid=IwAR3P5J7Q_PMjhFVNigh4I92qMoZuJ100AbW4bLTVD_FHXGi7UEFTqygNnhY

The pandemic caused by COVID-19 had an impact on AJPP. In that sense, the candidates from the VI generation of AJPP followed for the first time an online court session which took place in the Basic Court Kavadarci.¹⁶ This is a significant step forward, incentivised by the conditions caused by the global pandemic, since the online following of sessions, if it is made publicly available to all citizens, will have an impact on increasing transparency and trust of citizens in the judiciary. Consequently, this would mean additional investments into equipment that makes such following of sessions possible. At the same time, the pandemic slowed down the process of selection of new candidates for trainees at initial training, within the seventh and eighth generation of trainees, which took place according to the following timeframe:¹⁷

| Time period | Stages of selection of candidates |
|----------------|---|
| May 2019 | Public call for enrolment of 60 trainees at VII generation |
| June 2020 | Final ranking list for admission of trainees for initial training in VII generation |
| September 2020 | Public call for enrolment of 97 trainees in VIII generation |
| April 2022 | Final ranking list for enrolment of for initial training in VIII generation |

New trainees for initial training within the eighth generation started attending the training on 16 May 2022, after the admissions ceremony, when it was concluded, inter alia, that not even the eighth generation of judges and prosecutors will be sufficient to fill the vacancies.¹⁸

AJPP works continuously on improving the quality of trainings and introducing the necessary themes for training, on the basis of evaluations of previous trainings and proposed topics sent by the JCRNM, CPPRNM, experts and nongovernmental organizations.¹⁹ In terms of cooperation of the AJPP with other bodies and institutions, AJPP had signed memoranda of cooperation with the following relevant institutions, international and nongovernmental organizations:²⁰

| Year the memorandum of cooperation was signed | Institutions and organizations with which memoranda of cooperation were signed |
|---|--|
| 2020 | State Institution for Prevention of Delinquency of Children (SIPDC) and the Chamber of Mediators of Republic of North Macedonia |
| 2021 | <ul style="list-style-type: none"> • Judicial Academy of Turkiye • Ministry of Finance – Directorate for Financial Police • Judicial-media council • European Policy Institute, the Chamber of Mediators and Dutch Federation of Mediators |
| 2022 | <ul style="list-style-type: none"> • Centre for training and judicial studies (SSR) of the Kingdom of Netherlands • AIRE centre |

16 <https://jpacademy.gov.mk/kandidatite-od-vi-generacziya-na-akademijata-ke-go-sledat-prvoto-onlajn-rochishte-vo-osnoven-sud-kavadarci/>

17 Data are received from the following sources: Steering Board of AJPP, „Public Call for Enrollment in Initial Training at the Academy for Judges and Public Prosecutors Pavel Shatev – Skopje“; <https://jpacademy.gov.mk/wp-content/uploads/2020/06/rang-lista-na-slusатели-na-pocetna-obuka-za-7-gener.-1.pdf>; „Official Gazette of the Republic of Macedonia“, No. 230/2020 од 24.09.2020; Public call for enrollment in initial training at the Academy for Judges and Public Prosecutors „Pavel Shatev “ Skopje; Publication of ranking list of trainees in the VIII-th generation of trainees for initial training at the Academy for Judges and Public Prosecutors, April 2022 година, <https://jpacademy.gov.mk/announcements/objavuvane-na-rang-lista-na-slusатели-vo-viii-ta-generacziya-slusатели-na-pocetna-obuka-vo-akademijata-za-sudii-i-javni-obviniteli/>

18 The Academy is training new judges and prosecutors, May 2022, <https://alsat.mk/mk/spremaat-novi-sudii-i-obviniteli-nekoi-rodnini-na-funktsioneri/>

19 Conevska Vangelova and Kamberi, Shadow report on Chapter 23 for the period April 2020 - September 2021, <https://epi.org.mk/post/20027>

20 All memoranda for cooperation are available from the following link - <https://jpacademy.gov.mk/memorandumi-za-sorabotka/>

ANALYSIS

2. ADOPTION OF A NEW LAW ON AJPP

A. TIMEFRAME FOR DRAFTING OF THE LAW

| Time period | Development stage |
|---------------|--|
| February 2019 | established working group for drafting of the law |
| May 2019 | the draft law was published on ENER |
| July 2019 | the draft law was endorsed by the Government, but it was returned for some additional work |
| June 2021 | the new draft law was endorsed by the Government and sent to the Parliament |

Although the adoption of a new Law on AJPP was not foreseen directly as a measure in the Strategy,²¹ nor was it foreseen in the Strategic Plan of the Ministry of Justice 2020-2022²², it is necessary in order to respond to the recommendations and suggestions stated in the Report from the TAIEX peer review mission on training of judges and public prosecutors, for future operation and functioning of AJPP, to some of the measures established in the Strategy with Action Plan, and to create a single comprehensive text that consistently regulates all issues. Still, for the new Law on AJPP is not received well by the opposition, which is making accusations about participation of the judiciary and coerced adoption of laws²³, so it is still in parliamentary procedure.

B. TRANSPARENCY AND INCLUSIVENESS IN THE PROCESS OF DRAFTING THE LAW

In February 2019, the Ministry of Justice established a working group composed of representatives of the judiciary and prosecution, representatives of the Ministry of Justice, representatives of civil society organizations that are active in the justice system sector, as well as the director of AJPP, in order to work on drafting a new legal text on AJPP.²⁴

The initial draft Law on AJPP was published on ENER in May 2019, along with the notice that the law is in development and the draft-report on regulatory impact assessment.²⁵ The final report on regulatory impact assessment was not published. ENER received four comments on the draft law in 2019. Still, this version was not adopted by the previous composition of the Parliament²⁶ and was returned to the Ministry of Justice for reworking (the new version was not published on ENER).

21 Strategy for reforms of the justice sector 2017-2022 година with Action Plan, available at https://www.pravda.gov.mk/Upload/Documents/Strategija%20i%20akciski%20plan_MK-web.pdf

22 Strategic plan of the Ministry of Justice 2020-2022, <https://www.pravda.gov.mk/resursi/12>

23 Tensions in the parliamentary committee on political system, VMRO-DPMNE does not allow discussions on the draft law on Academy for Judges and Public Prosecutors, February 2022, , <https://bit.ly/3NKUJde>

24 Working programme of the Academy for Judges and Public Prosecutors за 2019 година, достапна на: <https://jpacademy.gov.mk/wp-content/uploads/2021/04/programa-za-rabota-na-asjo-za-2019-pk.pdf>

25 ENER; предлог Law on The Academy for Judges and Public Prosecutors, https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=52583

26 Parliament of the Republic of North Macedonia «Parliament Session no. 123 of the Republic of North Macedonia” (16 February 2020)

B. AIM OF THE ADOPTION OF A NEW LAW ON AJPP

Although the adoption of a new law is not provided expressly as a measure in the Strategy, the draft Law on AJPP indicates that *“the main objective in proposing this law is featured as a strategic objective in the Strategy: harmonizing the judicial practice by increasing the scope of trainings of judges within the AJPP, new legislative criteria for composition of steering and managerial bodies of AJPP, as well as redefining the modalities for the admission and the final exams, on the basis of measurements and objective criteria to evaluate the knowledge of candidates.”*²⁷ Additionally, as rationale for the adoption of a completely new text, the draft law indicates that more than 80% of the provisions in the existing Law on AJPP were amended.²⁸

The need to adopt the new Law on AJPP was established also in the most recent report of the European Commission za Republic of North Macedonia.²⁹ In this sense, the European Commission pays particular attention to the need to observe the recommendations of the assessment mission of 2018 when adopting the new Law on AJPP, and to make AJPP again the single point of entry in the judiciary and prosecution, and to ensure a fair and transparent access to these professions. However, the Law still remains in a parliamentary procedure.

A functional probation system (Measure 2.2.9-1)

Probation Service in Republic of North Macedonia was established within the Ministry of Justice – Directorate for Execution of Sanctions and it supervises the execution of sanctions without deprivation of liberty, more specifically over the alternative measures: suspended sentence with protective supervision, community service, and house arrest, as well as over the enforcement of parole pronounced by a court decision. The probation service is monitoring the sentenced individuals and is offering them support, and the aim is to maintain safety in the community, by improving the resocialization and rehabilitation of individuals under probation monitoring, and also to reduce the prison population.

Probation offices operate on the territory of Basic Criminal Court Skopje, as well as on territories of the basic courts in Tetovo, Prilep, Veles, Strumica and Stip, Kumanovo, Bitola, Kocani, Ohrid, Gevgelija and Kavadarci, Kicevo and Struga. The key challenges initially faced when establishing efficient probation system, were the very small number of cases, which did start growing in the recent years (165 in 2019 and 276 in 2020). Additionally, it is necessary to strengthen the capacities of probation officers, judges, as well as staff in penitentiary institutions, who work on resocialization. In 2021, a special Strategy was adopted on development of Probation Service (2021-2025), which provides a roadmap for measures that need to be implemented over the forthcoming period, and which address the aforementioned challenges.

In the course of 2022, the process of amending the Law on probation begun, and a notice about the beginning of the process was posted on the ENER. The aim of the amendments is to overcome the deficiencies which were identified from the practice of the probation service thus far, and to improve the effectiveness of the probation system and the safeguards that will be accepted by the community. These legal amendments will achieve harmonization with the Law on Execution of Sanctions, amendments of legal provisions from the formal aspect and from the aspect of jurisdiction of the probation service, deciding on the role and modalities for

²⁷ Draft law on Academy for Judges and Public Prosecutors, available at <https://www.sobranie.mk/materialdetails.nsp?materialId=543628f3-2109-4bd5-8b99-22d543901888>.

²⁸ Draft law on Academy for Judges and Public Prosecutors, available at <https://www.sobranie.mk/materialdetails.nsp?materialId=543628f3-2109-4bd5-8b99-22d543901888>.

²⁹ North Macedonia Report 2021 (2021), available at https://ec.europa.eu/neighbourhood-enlargement/north-macedonia-report-2021_en

the probation service regarding the parole arrangements, as well as amendments to deadlines for the probation service – more precisely, extending the deadlines for developing an individual treatment plan for individuals under probation, etc.

■ **Improving the human resources in the justice system (Measure 2.2.11)**

Since the adoption of the Strategy, and to the present date, no significant activities were carried out to improve the situation with human resources in the judiciary, from the perspective of enabling normal functioning of courts and other justice system institutions. Despite the ongoing efforts to develop human resources management in the justice system bodies, and efforts to implement the Strategy for Development of Human Resources and Court Network, in 2022 there was a drastic decrease of human resources in the judiciary. Namely, due to lack of coordination between line ministries, the Ministry of Labour and Social Policy and the Ministry of Justice, when amending the Labour Law (“Official Gazette of Republic of North Macedonia” No. 151/2021) a complete distortion of human resources occurred, since the amendment foresees mandatory retirement at the age of 64 years. This amendment actually led to retirement of 60 judges in 2022 or 14% of the total number of judges in Republic of North Macedonia.

The Strategy also foresaw development of a new Law on Judicial Service. For this purpose, a working group was established and it had just one meeting (February 2021), and at this moment no forthcoming meetings of the working group are scheduled.

Recommendations

- The new strategy needs to place an emphasis on more institutionalization of harmonization of judicial practice of higher courts. It also needs to foresee funding for organization of the process of harmonization of judicial practice, through both securing judges and law clerks, and organizing meetings of the four appellate courts and the Supreme Court of Republic of North Macedonia. It is necessary to establish a mechanism for harmonization of judicial practice for the administrative courts and the public bodies, too, in line with the doctrine of the LGAP and LAP.
- The new Law on JCRNM foresees a basis for quality work of JCRNM, it is necessary to further improve the practice using standards for transparent and accountable work not only to the judges, but also before the entire public
- Adequate budgetary support for the activities of the AJPP is needed.
- It is necessary to provide staffing, technical and infrastructural equipping of the AJPP.
- It is necessary to secure new premises for the AJPP so that it can perform its primary competences in full, more precisely, to organize trainings within the framework of continuous training, and to have sufficient capacities to admit new candidates for initial training.
- It is necessary to adopt the new Law on AJPP, which is in parliamentary procedure and to implement it properly.
- Advancing the system of probation and other alternative sanctions
- Adopting the amendments to the Law on probation
- Strengthening the capacities of probation officers, judges, as well as the penitentiary institutions staff that works on resocialization
- Human resources are the most critical aspect of the judiciary in Republic of North Macedonia. The drastic reduction of the number of judges in 2022 (14% of the total number of judges) caused distortion of the judicial system which will have far-reaching consequences on the work of the courts and exercise of justice for the citizens and legal entities. It is necessary to revise the Strategy on Human Resources which was adopted by the JCRNM in 2020, in order to develop a model that will reduce the consequences caused by the Law on amendments to the Labour Law. Additionally, the new strategy should facilitate the procedure for employment in judicial service, by reducing the dependence of the judiciary from the Ministry of Finance and the Ministry of Information Society and Administration.

3. LIABILITY

- **LIABILITY OF JUDGES (MEASURES 2.3.1, 2.3.2, 2.3.5 AND 2.3.6)**

- **Introducing legislative provisions on the bases and procedure for individual liability of members of JCRNM**

Despite the fact that the Law on JCRNM³⁰ of 2019 provides for the first time an opportunity for judges to directly file a motion to initiate a procedure for disciplinary responsibility of a member of JCRNM whom they have elected, thus far there is no application to initiate a procedure for disciplinary responsibility of a member of JCRNM. Such motion can be filed by at least 20 judges or any member of JCRNM with the right to vote, if the member of JCRNM:

- » influences the independence of judges and exerts pressure regarding decisions on particular cases;
- » neglects and does not perform their duties in the work of JCRNM;
- » if they refuse to submit a declaration of assets and interests, pursuant to the law, or if the data contained in the statement are to a large degree untrue or
- » violate the rules on withdrawal, in situations when the member of JCRNM knew or should have known of the existence of any of the grounds for withdrawal prescribed in this law.
- » Member of JCRNM is removed from office if the violation was committed;
- » intentionally or with obvious negligence, where member of JCRNM is at fault without justified reasons, and
- » the violation caused serious consequences.

It was noted several times in reports of Blueprint Group, but it is necessary to note once again that one current member of JCRNM, representative of the appellate region Gostivar, is subject of an indictment by the Prosecutor's Office for Prosecuting Organized Crime and Corruption. He is the first defendant, together with 6 more individuals, for unlawful privatization of land in Tetovo. In December 2019, the JCRNM lifted his judicial immunity, and in the meantime, despite the fact that the court accepted the indictment and initiated a court procedure, JCRNM did not initiate a procedure for their temporary suspension from the office of a member of JCRNM, which would have been a good step to restore the faith of citizens in impartial and independent judiciary.

In the meantime, after meeting the requirements for old-age retirement, the member of JCRNM who is a defendant in a criminal procedure was removed from judicial office, but also from the position member at JCRNM.

- **Strengthening the disciplinary responsibility of a judge by clearly prescribing the grounds for removal of a judge, where only the most serious disciplinary violations would be grounds for removal. The quantitative data, such as the percentage of repealed or reversed, should be grounds for liability of a judge, but not for their removal**

³⁰ Articles 34 and 35 of LJCRNM („Official Gazette of Republic of North Macedonia“ no.102/2019).

Amendments to the Law on Courts³¹ redefined the grounds for removing of a judge indicating more specifically what is considered a more serious disciplinary offence, which makes the judge undeserving to perform the judicial office as well as unprofessional operation and dereliction of judicial duty, and they clearly stipulated the conditions to pronounce a disciplinary measure on the basis of a disciplinary offence. This provided better security for judges, regarding the bases for disciplinary sanction or for removal. The number of judges removed in the period 2018-2021 is provided in the table above.

Abolishing the Law on Council Establishing Facts and Initiating a Procedure to establish a liability of a judge, and amending the Law on JCRNM aiming at restoring the competence to initiate and run disciplinary procedures

The Law on Council Establishing Facts and Initiating Procedure to establish liability of a judge was abolished in January 2018, which transferred the overall jurisdiction for liability of judges and presidents of the courts to the JCRNM, respecting the recommendations of the Venice Commission and non-governmental organizations to establish a committee that will carry out the procedure to establish responsibility.

Involving the Association of Judges and the Association of Public Prosecutors in monitoring procedures for deciding on disciplinary responsibility, by legal amendments regarding JCRNM

Involving the Association of Judges of Republic of North Macedonia in monitoring procedures and deciding on disciplinary responsibility is foreseen in the Law on JCRNM, in order to provide greater transparency when running the procedure for responsibility of a judge/president of court, upon a request of the judge or president of the court that are subject to the procedure. This procedure is of confidential nature, it is carried without the public presence, and respecting the reputation and dignity of the judge or president of the court, but presence of public is allowed if it is requested by the judge/president of court against whom the procedure is opened.

Liability of public prosecutors (Measures 2.3.3 and 2.3.5)

With regards to responsibility of public prosecutors, it is necessary to mention that when deciding on a given disciplinary case, CPPRNM previously, by a decision, excludes the public from it, and therefore there is no possibility to monitor the entire procedure. Recently, the CPPRNM removed one public prosecutor from the Basic Public Prosecutor's Office in Tetovo, for a serious disciplinary offence.

³¹ Law amending the Law on Courts, („Official Gazette of RNM“ No.96/2019)

Recommendations

- When drafting the amendments to the Law on JCRNM, the legislator should foresee deadlines for procedures on disciplinary responsibility of a member of JCRNM, so that there is no room for any corruptive practice, influence on members of JCRNM or conflict of interest contrary to legal provisions. Such legal gaps have been identified in Article 32 which deals with temporary suspension from performance of the duty as a member of JCRNM as well as in Article 35, regarding the motion to initiate disciplinary procedure against a member of JCRNM.
- Considering the fact that the measure related to strengthening of capacities of bodies for judicial ethics is included in the Law on JCRNM, it is necessary to reflect it in the new strategy and to foresee mandatory trainings on judicial ethics for all judges, in line with international principles.

4. EFFICIENCY

■ **Monitoring the efficiency of the judiciary (Measure 2.4.1)**

This measure is directly linked to the application of the Law on JCRNM (“Official Gazette of Republic of North Macedonia” No. 102 of 22.5.2019). Namely, Article 103 of the Law foresees, within JCRNM, establishing a Centre for Information Communication Technology, Analytics and Statistics that has the competence of maintaining the database with electronic files of judges, candidates lists for election of judges and presidents of courts, evaluation of judges and presidents of courts and the database on financial and material operation of unit users of court budget, as well as to maintain a replica of the database of the Court Information System that is hosted at the Supreme Court of Republic of North Macedonia. This measure was not implemented, having in mind that JCRNM had not established a functional centre. JCRNM had secured some space only through adaptation of one part of their working premises. The budget for 2022, within the court budget does not provide funds for such capital investments.

■ **Improving the capacities of the judicial and prosecution service (2.4.4)**

In line with the Strategy and Action Plan, the upgrading of capacities of judicial and prosecutorial service needs to be carried out by harmonizing the laws dealing with judicial and prosecutorial service with the Law on Public Sector Employees and The Law on Administrative Servants.

Namely, the proposed amendments to the Law on Judicial Service³² achieve equality of staff in the private and in the public sector, by establishing the same amount of legally minimum salary and harmonization (in tiers) of the other salaries of judicial servants at all levels, and also to ensure continuity of changes of salaries in the judicial administration in relation to minimum salary on the national level, as a long-term objective. Within the framework of harmonization of the Law on Judicial Service with the Law on Minimum Salary in Republic of North Macedonia, there is also an increase of salaries of employees in the judicial service by 15%.

Improving the capacities of prosecution service has the aim of harmonizing the Law on Prosecution Service with the Law on Employees in the Public Sector and the Law on Administrative Servants, since the previous legal solution contains imprecisions regarding the definition and payments of supplements to salaries of prosecutorial officers. The draft Law amending the Law on Public Prosecutor’s Office establishes the same amount of legal minimum salary and harmonization (in salary tiers) of other salaries of prosecutorial officers at all levels, and also ensures continuity of changing salaries in prosecutorial administration in relation to the minimum salary on the national level.³³

³² Draft Law amending the Law on Judicial Service, published on ENER on 05.12.2018, https://ener.gov.mk/default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=50175

³³ Draft Law amending the Law on Prosecutorial Service, published on ENER on 05.12.2018 https://ener.gov.mk/default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=50176

Still the proposed laws amending the Law on Judicial Service and The Law on Prosecution Service, in shortened procedure, are still not adopted, despite the fact that the deadlines foreseen in the Action Plan and the Strategy have been long exceeded, the Parliament of Republic of North Macedonia, on 27 July 2022, approved the draft laws and on the following day they were reviewed at a session of the Legislative Committee, and it is expected that they are scheduled for vote on a plenary session.

Recommendations

- The new strategy should foresee short-term steps to establish a Centre of Information and Communication Technology, Analytics and Statistics within the JCRNM, which will commence the process of keeping uniform statistics and processing all relevant data stemming from the work of the courts.
- It is necessary to revise in full the Law on Judicial Service in order to harmonize it with the Law on Public Sector Employees and The Law on Administrative Servants, taking into consideration all recommendations from the Association of Court Administration, so that the legislative amendments correspond to the needs of judicial service.

5. TRANSPARENCY

- **TRANSPARENCY OF JCRNM (MEASURES 2.5.1 - 2.5.4)**

- **Establishing clear criteria, rules and procedures for publicity in the sessions of JCRNM**

According to the established action plan, this measure was formally completed by the adoption of the new Law on JCRNM in May 2019. It improves the criteria and procedures for publicity in the sessions.

The new Law on JCRNM provides better transparency and accountability in the work of JCRNM, indicating precisely the cases when JCRNM has the duty to publish on its web-site some of the activities implemented. Therefore, transparency in the work of JCRNM is achieved through open and public sessions and posts on the web-site. The legal obligation of publishing the minutes from sessions of JCRNM is respected, and the minutes which are detailed, are published after they are adopted. Aiming at greater transparency, the candidates list are published, featuring the names of judges who are candidates for election of JCRNM members from the rank of judges.

There are clear criteria and procedures for publicity of the sessions of JCRNM, prescribed in the law and in the Rules of Procedure of JCRNM. During this period of implementation of the Strategy, members of JCRNM as well as staff responsible for public relations attended a training and strategic documents were adopted to ensure bases for transparent JCRNM, but the lack of technical support and lack of proactive initiative by JCRNM lead to a situation where not even some of the legal obligations are implemented in full.

The obligation for transparent modality for election of JCRNM members is provided by the fact that the committee for carrying out the election of JCRNM member from the ranks of judges is composed by representatives of the Association of Judges and representatives of associations of citizens. However, the part of obligation which foresees that the public can directly follow the tabulation of the election result via the web-page of JCRNM, and in a case it can not provide a direct broadcast due to technical reasons, it has the duty to publish the recording on the web-site not later than the next day. JCRNM did not implement this obligation since it lacked technical capacities for live broadcast at the web-site of JCRNM, without finding alternative modalities such as YouTube or other kinds of links for direct broadcast.

- **Publication of all decisions for election, promotion and removing of judges and public prosecutors, as well as decisions establishing disciplinary responsibility, respecting legal provisions on data confidentiality by JCRNM and CPPRNM**

A positive change in the working modalities of JCRNM after the adoption refers to modalities for election, promotion and removing of judges and presidents of courts, as well as for decisions to establish disciplinary responsibility. In this context it is particularly relevant to mention decisions on removing of judges and presidents of the courts. Namely, the procedure to establish a responsibility of a judge is not open to the public and is confidential in nature. In itself, it lasts longer, but even after a decision to remove a judge or president of court, JCRNM is not publishing it until it becomes final, due to the right to appeal and presumption of innocence. This

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could last quite long, which opens opportunities to spread inaccurate information in the public about the grounds for disciplinary responsibility or removing of a judge or president of court. The procedures of removing a judge or president of court initiated according to new legislation are significantly faster, and the procedure takes less time, so it could be said that in the last year JCRNM demonstrates greater efficiency regarding such procedures.

■ **Establishing specialized organizational units to manage the system of gathering, processing and analysing statistical data on the operation of the courts and public prosecutor's offices in JCRNM and CPPRNM**

The analytics department within the JCRNM was established immediately after the adoption of the new Law on JCRNM. Due to difficulties in receiving consent for new employments of adequately skilled staff, and therefore the JCRNM reallocated some of the staff to perform these duties. Only in the first half of 2022 a call was published to employ adequate profiles and strengthen human resources of this department.

■ **Developing Methodologies for uniform forms for annual reports**

The new Law on JCRNM prescribes the contents of the Annual Programme of JCRNM,³⁴ enumerating all parameters that it needs to contain. Therefore, the contents of the annual report of JCRNM are legally prescribed, and prescribed is also the deadline for adoption of the Annual report for JCRNM.³⁵ The format for the report is established by the Committee for Political System and Relations between Communities of the Parliament of Republic of North Macedonia.³⁶ due to the need to standardize the reports of bodies and institutions that have a legal basis to submit reports to the Parliament of Republic of North Macedonia. JCRNM is respecting this obligation and for years it has used a uniform reporting form.

■ **Revision of the Methodology for Court Statistics, regarding the format of annual reports**

This measure, too, can be considered as fulfilled, since the JCRNM established a practice of uniform reports on the operation of courts for quite some time. This is a standardized form to enter data that are taken into consideration as criteria for diligence of the courts. Reports on the operation of courts are produced on a quarterly basis, they are adopted by the JCRNM, and on the basis of these reports it is following the working dynamics of judges and the courts and identifies if they are diligent or not. There is also an annual report on operation of courts, which is adopted by JCRNM and is the basis for development of the Annual Report of JCRNM. But despite this, it happens that numbers on cases presented in reports of the courts do not correspond to numbers that the JCRNM has. Namely, when reviewing quarterly reports about the operation of courts, JCRNM is producing reports on the basis of the quarterly report it receives from the courts and data it retrieves from the ACMIS. It happens that the data sometimes do not correspond, and the problem is in the ways in which courts register the cases, such as cases where the statute of limitation expired, cases processed by the president of the court, etc. This problem is technical in nature, but it is present for years, and it will be overcome by upgrading the ACMIS and more careful filling out the report forms by the courts.

³⁴ Article 37 of LJCRNM („Official Gazette of Republic of North Macedonia“ No.102/2019)

³⁵ Article 100 of LJCRNM („Official Gazette of Republic of North Macedonia“ No.102/2019)

³⁶ Eleventh session of the Committee for Political System and Relations between Communities of the Parliament of Republic of North Macedonia, held on 17 November 2017

Transparency of CPPRNM (Measures 2.5.1 – 2.5.4)

CPPRNM on its web-site publishes the dates for sessions in a timely manner. Regarding the minutes of sessions, they are partially published. Regarding communication with the public, it was noted that CPPRNM has appointed a public relations officer during the relevant period, however the web-site of CPPRNM does not feature the contact-details of that individual.

Annual reports of CPPRNM are published and easily available from their web-site, but a reason for concern is the non-transparent publication of the budget of CPPRNM. The most recent data published on financial operation of CPPRNM are for 2017.

In terms of transparent operation, it is necessary to note that after the end of sessions of CPPRNM where decisions are taken on issues of interest for the public and journalists, the president of CPPRNM gives answers and statements for clarification of decisions adopted by CPPRNM.

Recommendations

- The new Law on JCRNM established a good basis to ensure transparency of the JCRNM. Also, JCRNM has established formal procedures and strategies for communication which need to be applied accordingly, respecting the principles of professionalism, diligence, constructiveness, commitment, which are some of the ways to restore the trust in the judiciary. The proactive and substantial transparency in the work of JCRNM, through regular publication of decisions, minutes and all acts it is adopting within the scope of its work, should not always be predicated upon legally prescribed deadlines.
- Regarding the work of CPPRNM, it is necessary to strengthen the transparent operation regarding publication of decisions and minutes from sessions of CPPRNM, and to offer detailed and specific rationale on the election of most suitable candidates for public prosecutors, or on career promotion of public prosecutors.
- It is particularly important to work on improving accountability for financial operation of CPPRNM, through regular and timely publishing of annual financial reports of CPPRNM.

6. ACCESS TO JUSTICE

Law on Attorneys (2.6.2.3)

The Strategy foresaw amendments also to the Law on Attorneys.³⁷ To implement this measure, a the Ministry of Justice, in November 2019, established a working group which, in addition to the Ministry of Justice included representatives of: Bar Association of Republic of North Macedonia, the judiciary, public prosecution, notaries public and the civic sector. The working group started working on the amendments one year later.

Main objectives of the amendments, according to the Ministry of Justice are:

- » establishing a legal basis to introduce a mandatory initial and continuous (ongoing) training for attorneys; and
- » to make it impossible to register in the ledger of attorneys an individual whose previous office of a judge, public prosecutor and other indicated elected and appointed holders of public office was terminated with a final decision in a judicial, disciplinary or other procedure that established liability in the performance of the office.

Still, the process of amendments did not preclude also other interventions in the legal text that are not aiming at attaining the objectives of the Strategy. In November and December 2020 several meetings took place, to develop precise proposals for provisions that incorporate the objectives of the amendments, and also to introduce additional interventions aiming at nomotechnical improving of the text of the Law, and to establish some precise deadlines for certain actions. The working group continued working in 2021. In July 2021 the text was adopted by the Government and sent to the Parliament for decision-making, and it is currently in the stage of first reading.³⁸

Law on Mediation (2.6.5.2)

A. A TIMEFRAME FOR ADOPTION OF THE LAW

| Time period | Development stage |
|---------------|---|
| November 2020 | Established working group to draft the law |
| June 2021 | The draft law was endorsed by the Government and sent to the Parliament |
| December 2021 | The Parliament adopted the new Law on Mediation |
| January 2022 | The new Law on Mediation entered into force |

³⁷ Measure 2.2.5-1 from the Strategy.

³⁸ <https://www.sobranie.mk/detali-na-materijal.nsp?param=b5dc5a0a-0881-4e9e-9b83-aea268d99c7d>

The Strategic Plan of the Ministry of Justice 2020-2022³⁹ foresaw just amendments to the existing Law on Mediation, as opposed to the Strategy⁴⁰ which foresaw adoption of a new Law on Mediation. Still, the adoption of the new Law on Mediation⁴¹ in December 2021, exceeded the deadline established in the Action Plan to the Strategy, according to which this law was supposed to be adopted in June 2019..

B. TRANSPARENCY AND INCLUSIVENESS IN THE PROCESS OF ADOPTION OF THE LAW

The new draft Law on Mediation was developed by the working group⁴² established in the Ministry of Justice, where members were the director of AJPP, a representative of the non-governmental sector, representatives of the Chamber of Mediators, including the president of the Chamber. The new draft Law on Mediation was not published on ENER, so the report on RIA and all comments published on ENER pertain to the draft-law published in 2018. Still, proposals related to the draft were sent by various stakeholders to the Ministry of Justice and they were reviewed by the working group.

Although the Strategy foresees a public debate on the new Law on Mediation, a public debate on this law was not organized.

C. OBJECTIVE OF THE ADOPTION OF THE LAW

The new Law on Mediation is aiming at meeting the objectives that lead to its adoption, i.e., it revises the exam for mediators and introduces new developments regarding the way in which the exam for mediators is taken before a committee, which will have an impact on development of quality, professional and trained staff that will successfully perform tasks in the area of mediation. Additionally, the possibility to initiate a procedure on mediation using electronic means is also foreseen. In order to overcome the problem with the duality of data held by the Ministry of Justice and The Mediation Board, mandatory entering of all received applications for mediation in the Electronic Register is introduced. With this, the register, introduced by the Ministry of Justice in August 2020 becomes mandatory. The law regulates more closely the operation and competences of the body in charge to ensure, monitor and evaluate the quality of work in mediation, i.e., it introduces a National Council on Mediation, composed of a National Coordinator on Mediation, four members and a secretary. However, the period of implementation is still short and it takes time to see whether the goals for which the law was adopted will be met.

39 Strategic Plan of the Ministry of Justice 2020-2022, <https://www.pravda.gov.mk/resursi/12>

40 Strategy on Judicial Reform 2017-2022, with Action Plan, available at https://www.pravda.gov.mk/Upload/Documents/Strategija%20i%20akciski%20plan_MK-web.pdf

41 Law on mediation, Official Gazette of Republic of North Macedonia. No. 294/2021 of 27.12.2021, <https://www.slvesnik.com.mk/Issues/347ca6fd31344c17b804dab7b326c226.pdf>

42 The group finalized the version of the draft law on mediation that was produced by the previous working group in 2018 and which was not adopted by the previous composition of the Parliament.

D. IMPLEMENTATION OF THE LAW ON MEDIATION⁴³

In April 2022, on the basis of the new Law on Mediation, adopted and published were the following secondary legislation items:

- » Rules on detailed criteria, subsidies, payments, form for the fee charged, costs of the mediator, the form of the application for subsidies, and necessary documents that are attached to the application to subsidise some of the costs for mediation,⁴⁴
- » Rules on the modalities to perform supervision over the work of the Chamber of Mediators of Republic of North Macedonia,⁴⁵
- » Rules on the contents of the Register of received applications for mediation and modalities on entering the received applications for mediation⁴⁶ and
- » Rules on the Programme for taking the mediators exam, modalities to organize and take the test, as well as the form and contents of the certificate for passed exam.⁴⁷
- » At the end of August 2022, on the basis of the Law on Mediation, the Minister of Justice enacted the Charge Rates for Mediators, which determines the fee and reimbursement of costs of mediators for the actions taken in the procedure of mediation, recorded in the Register of applications for mediation.⁴⁸

At the 54th session of the Government of Republic of North Macedonia, the vice-president of the Chamber of Commerce of RNM and president of the Association for Mediation within the Chamber, Jelisaveta Georgieva Jovevska, PhD, was appointed as the first National Coordinator for Mediation.⁴⁹

In the second half of July, the Government of Republic of North Macedonia opened a public call to state one's interest for participation in the National Council for Mediation, with an application deadline until 5th August.⁵⁰ On the session that took place on 6 September 2022, the Government of Republic of North Macedonia adopted a Decision, appointing as members of the National Council for Mediation:

- Ljupco Sotirovski,
- Ivana Talevska-Trendafilova,
- Zoran Petkovik-Bakli and
- Miljazim Mustafa,

and Vasko Nelovski from the Ministry of Justice is appointed as the secretary of the National Council for Mediation, from the ranks of administrative servants in the state administration.⁵¹

43 Law on mediation, Official Gazette of RNM. No. 294/2021, 27.12.2021

44 Official Gazette of Republic of North Macedonia. No. 91/2022, 12.04.2022

45 Official Gazette of Republic of North Macedonia. No. 100/2022, 26.04.2022

46 Official Gazette of Republic of North Macedonia. No. 100/2022, 26.04.2022

47 Official Gazette of Republic of North Macedonia. No. 101/2022, 27.04.2022

48 Official Gazette of Republic of North Macedonia. No. 194/2022, 05.09.2022

49 JELISAVETA GEORGIEVA JOVEVSKA APPOINTED BY THE GOVERNMENT OF RNM AS NATIONAL COORDINATOR FOR MEDIATION, July 2022, <https://www.mchamber.mk/Default.aspx?mId=3&lng=1&evId=90305>

50 Public call for expression of interest for participation in the National Council for Mediation, Government of the Republic of North Macedonia, 20.07.2022, <https://vlada.mk/node/29660>

51 Official Gazette of Republic of North Macedonia. No. 201/2022, 15.09.2022

It is necessary to wait and see how this system will work, and more improvements to the system are needed to achieve quality, and to possibly introduce amendments to the legislative framework and the register, and to connect with international networks for 3a mediation, in order to exchange good practices and experiences.

LFLA (2.6.1)

LFLA was adopted in May 2019, and the application commenced on a 1 October 2019. The Law prescribed new elements, and it was expected that they would have a positive impact on the advancement of the right of natural persons to access to justice and equitable judicial protection.

During 2021 the implementation of the LFLA intensified, which allowed for identification of certain problems and challenges in its application. The authorized officers in regional offices of the Ministry have difficulties in establishing if the legal matter is justified, while the provision of legal advice takes time and requires proficiency and training in legislation in many areas, particularly social- and child-protection, family- and gender-based violence and justice for children.. The procedure for FLA in the procedures for asylum seekers is still not completely functional.

The Law is restrictive regarding access to legal aid and exemption from costs in procedures before notaries public and enforcement agents, with which a significant portion of legal problems that citizens need legal aid for remains outside of the system of legal aid. The problems with delivery and ex-officio collecting of data, as communication between authorized officers from the regional offices and other institutions that possess such data, regarding material, financial and property status, as well as social status, also remain.

LFLA again does not foresee legal aid for certain issues that poor people are facing. This was demonstrated in practice, in the first year of application of the Law. Limitations are related to the inability to approve secondary legal aid for: compensation of non-material damage, except in cases of victims of crime, as well as in cases of death or severe disability; issues related to public and communal services, as well as protection of property rights in an administrative procedure.

There is lack of cooperation and communication between the Ministry of Justice and the Bureau on Court Expert Evidence, although it is a body within the ministry, and, pursuant to the LFLA, it should provide expert evidence. To produce a DNA-analysis, expert evidence that is needed very often, to resolve issues in the area of child protection and to establish or challenge paternity, the Bureau does not have a contract with the Macedonian Academy of Sciences and Arts, or with other laboratories that carry out such expert evaluations.

In addition to this, the new law on financing of associations and legal clinics, via a public call for awarding funds to reimburse costs for the primary legal aid provided, had not started working. Therefore, the funds allocated for this purpose are not meeting the purpose of the intention of the Law, from the perspective of regional distribution of free legal aid.

Recommendations

- Complete and consistent application of the Law on Mediation and adoption of other secondary legislation items foreseen on the basis of this Law is needed.
- It is necessary to have consistent monitoring of the conclusion⁵² of the Government, adopted in July 2019, which recommends that the bodies of state administration, other state institutions and units of local self-government, when deciding on contentious issues that stem from the remit of their work, choose mediation as an option to resolve the disputes.
- More use of mediation is needed in: 1. procedures related to justice for children; 2. procedures against journalists, for defamation and insult; 3. Consumer disputes, 4. Insurance disputes.
- It is necessary to organize activities to promote mediation as an alternative dispute resolution mechanism, and to raise the awareness of citizens about the benefits from its use, by both the Ministry of Justice (a good example is the campaign for promotion of mediation entitled “There is a Solution”⁵³ announced by the Ministry in January 2022), and by other key stakeholders, including the Chamber of Mediators and civic organizations.
- It is necessary to organize ongoing trainings for judges, public prosecutors and other relevant stakeholders, about the mediation, as well as trainings for continuous development of mediators and to transfer the best practices and experiences from the EU, which will contribute towards better running of procedures.
- It is necessary to connect with international networks in the area of mediation and with mediators and trainers to exchange experiences.
- It is necessary that mediators maintain their neutrality and to have the will for continuous education, while the general public needs to be educated about mediation from an early age.
- The case law of ECHR needs to be used when formulating legal texts pertaining to access to justice. Additionally, when bringing individual decisions upon the applications filed, the authorised officers need to be properly trained to apply principles established by ECHR when implementing the provisions from LFLA.
- On matters that disproportionately affect the citizens who live in poverty, primarily disputes related to the public and utility services (power supply, central heating, water supply, telecommunications etc.), matters related to compensation of non-pecuniary damage, property issues in an administrative procedure, and especially for procedures before notary public and enforcement agent, it is necessary to provide secondary legal aid.
- It is necessary to create and establish programs for legal empowerment of citizens, their ongoing informing about the ways to resolve legal issues. This is the way to achieve a long-term and sustainable process of facilitating access to justice. Particular emphasis needs to be placed on decentralization of the primary legal aid, from the big urban centres, to the rural and remote settlements, and on proactive approach to reach out to socially excluded communities.

⁵² See more at: <http://www.kmrsm.org.mk/vest-statija/77890/zakluchoci-na-vladata-na-republika-severna-makedonija-so-koi-se-preporachuva-medijacija-pri-reshavanje-sporovi>

⁵³ Maricik announced the campaign “There is a Solution”. Mediation is a faster and more cost-effective procedure, January 2022, <https://www.pravda.gov.mk/vest/6276>

7. REFORMS RELATED TO SPECIAL JUDICIAL INSTITUTIONS

Optimization of the court network and specialization of judges (4.1.1)

In 2018 and 2019, the Ministry of Justice produced the Analysis of the Court Network in Republic of North Macedonia, which was presented also before the Council for Monitoring the Implementation of the Strategy. The analysis, inter alia, indicates that, considering the overall economic situation in the country, it is not recommended to abolish courts, but to transform them into judicial departments of other courts, as is the system in Italy. Amendments to the Law on Courts that had the aim of introducing optimization of the court network by reducing the number of courts by 20%, on 17 May 2019 and it did not decrease the number of courts in the country.

In addition to this analysis, the Centre for Legal Researches and Analyses produced functional analyses, for the period 2018-2021, of the administrative courts, appellate courts and the Supreme Court of Republic of North Macedonia as well as the basic courts. These analyses contain plans for improvement, with proposed measures for optimisation of the court network in line with the projections about the influx of cases and number of judges and law clerks.

Public Prosecutor's Office (Measure 4.1.3)

The Law on Public Prosecutor's Office was adopted in February 2020 and its application started on 30.06.2020. Regarding this Law, it is important to mention that the Blueprint Group for Reforms in the Judiciary, as an informal network of civic organizations in the area of judiciary, was involved on several occasions, as part of the consultative processes of the working group for drafting of the Law, and it also participated in the public debate on 28.01.2020 in the Parliament of Republic of North Macedonia, but the comments it made were not accepted. Additionally, during the procedure for adoption of the Law, several different versions of the draft law were produced, which contributed to the confusion in the entire process, and thus to de facto reducing the transparency and accountability in the process.

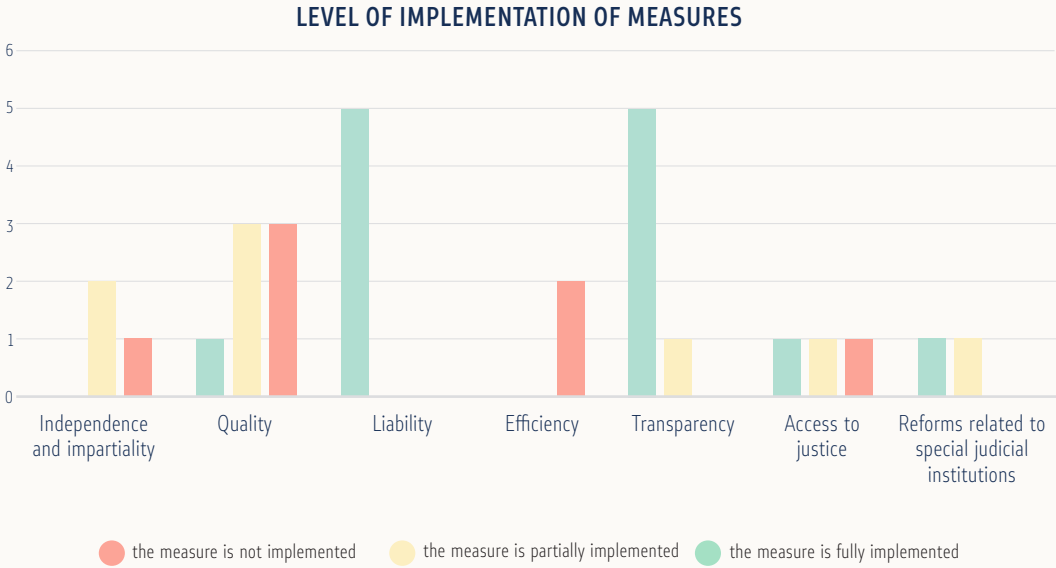
It is also obvious that there is no progress regarding the establishing of investigative centres in public prosecutor's offices, and during this period functional were only the investigative centres established in 2018. According to the information received from the Public Prosecutor's Office of RNM, thus far there are only 4 investigative centres, in the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption, Basic Public Prosecutor's Office Skopje, Basic Public Prosecutor's Office Tetovo and Basic Public Prosecutor's Office Kumanovo.

The system for electronic distribution of cases in public prosecutor's offices was not established and is not used; therefore, in both the basic and the higher prosecutor's offices cases are formed and distributed according to the Rules on Internal Operation of Public Prosecutor's Offices, as well as the Rules on Case Allocation in Public Prosecutor's Offices through the System of Electronic Case Distribution which was adopted in February 2022. In this sense, it is important to mention that the secondary legislation, that pursuant to Article 111 of the LPP should be adopted within 60 days from the date of entry into force of the Law, was adopted with this deadline exceeded, and most of them were adopted a year or more late.

Regarding the work of the public prosecution on the entire territory of the country, it is necessary to note that the retirement of public prosecutors, in the period before 30.06.2022, pursuant to the Labour Law has an impact on the efficient operation of the public prosecution. CPPRNM established termination of the performance of the office of public prosecutor for 10 public prosecutors, because they met the conditions for old-age retirement. Such situation in the Public Prosecutor’s office will have an additional impact on the efficiency in the fight against crime, considering the fact that the public prosecutor’s office faced shortage of staff even before this.

Recommendations

- The new strategy needs to make a proposal for new court network, and to have it based on facts and forecasts that are part of the functional analyses, as well as the reduced number of judges after the application of the amendments to the Labour Law. It is necessary to adopt policies on the necessary minimum number of population and influx of cases, according to which to base the decision on whether a court or court department is needed.
- It is necessary to begin with full implementation of the Law on Public Prosecutor’s Office, especially in terms of establishing a system for electronic distribution of cases, as well as establishing investigative centres within all prosecutor’s offices, considering the fact that there is still no progress regarding the number and the quality of investigative centres established between 2018 and now.



Chapter 2: Reforms in individual areas

CRIMINAL LAW AREA

New CC (Measure 5.1.1)

In December 2020, a broad working group was established, to draft the new CC, and it comprises judges, public prosecutors, attorneys and representatives of the academic community and the civic sector. The group held regular meetings, which resulted in an initial, draft version of CC in 2021, and in 2022 the draft-text of the new CC was published on ENER.

Due to the magnitude of changes, it is prudent to develop a new CC. Reasons to begin drafting a new CC are: recodification of all incriminations foreseen in other laws, redefining the present penal policy, by prescribing sanctions, harmonization with international instruments (Istanbul Convention, the EU Directive on Financial Fraud and others), redefining the crimes related to environment protection, redefining the provisions on confiscation, improving the provisions on safety of doctors and journalists, but also overcoming the other shortcomings identified. The proposed text of the new CC makes serious changes to the order of provisions, and there are also changes regarding crimes against the environment and several new incriminations are introduced, among which is also Ecocide. Additionally, changes were made and introduced were new incriminations in order to ensure harmonization with the Istanbul Convention, but still more changes are needed in order to have full harmonization with the Convention. A new incrimination is introduced, Reckless driving of a motor vehicle, after the countless reactions of the general public, but also of the professional public during the past year.

In addition to working on a completely new CC, in the first half of 2021, the Ministry of Justice drafted, and the Government endorsed the proposed draft of the Law amending the existing CC. It is of particular importance that the Draft is introducing implementation of Istanbul Convention, by establishing new incriminations that cover gender based violence, redefining the existing, and making the penal policy stricter with regards to these crimes. In addition to this, there are interventions regarding the crimes related to safety of journalists, certain provisions are changed in the area of confiscation and torture, and there harmonization of CC against the Directive (EU) 2017/1371 on combatting fraud related to the financial interests of the Union, through application of the criminal law. The draft law was sent to the Parliament in August 2021, however it is still not adopted.

LCP (Measure 5.1.2)

The Strategy, within the strategic orientation on due process and strengthening the rights of the defence, as well as safeguarding human rights in the criminal procedure, foresaw drafting of a Law amending the LCP. Main objectives that need to be attained through the amendments of LCP are:

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- » Harmonizing the LCP with the newly adopted EU directives related to right to interpretation and translation in criminal procedure, right to information in criminal procedure, protection of personal data within cooperation in criminal matters, on standards of right, support and protection of victims of crimes
- » Reviewing and amending the already drafted amendments to LCP in order to overcome the non-uniform interpretation and non-uniform practical application of some provisions
- » Precise definition of provisions related to ordering, extending and terminating the pre-trial detention measure
- » Precise definitions of the provisions on plea-bargaining

Still, despite the aforementioned objectives, the amendments to the legislative text are extensive, and what this really is adoption of a completely new LCP that will comprise amending of more than two thirds of the existing LCP.

The working group that is drafting these amendments is composed of stakeholders, i.e., representatives of state bodies and institutions, professional public, as well as civil society organizations. It is important to mention, in this sense, that the working group was created by a decision of the Minister of Justice, on 01.04.2021. Before establishing this working group, the process of drafting amendments to LCP started already in 2017, when a working group was composed of representatives of relevant institutions, judges, public prosecutors and academia, and this part of the process was rather closed to the public, before the public became involved through the representatives of the Blueprint Group in the working group 4 years later. The text of the Draft LCP is still in the process of development by the working group, and it could not be published on ENER. The comments made within the working group have been taken into consideration and reviewed in line with the dynamics of working on the text of the new LCP, i.e., some of them remain for review over the forthcoming period.

In the recent period, the working group also had 2 isolation sessions to discuss problematic issues related to amendments to the Law, regarding which on the group had not taken a common position previously. During these isolation session, special attention was paid to financial investigations, temporary seizing and freezing of assets, confiscation of unlawful proceeds, as well as the use of special investigative measures.

The last meeting of the working group was held in May 2022, and it will continue working in the forthcoming period, starting with September 2022. Deadlines foreseen in the Action Plan and the Strategy regarding the adoption of this Law were exceeded, since, in line with the revised action plan, the period of drafting the amendments to this Law was foreseen to last until July 2019. According to the operational dynamics of the working group, and also according to the assessment of coordinators and other participants in it, the working group is expected to have completed the draft text towards the end of 2022.

Law on State Fund for Victims' Compensation (Measure 5.1.3)

The Government, in July 2021 endorsed the text of the draft Law on Payment of Financial Compensation to Victims of Violent Crimes.⁵⁴ The draft law was sent to the Parliament and after one year it is in the stage of second reading.⁵⁵ This proposal provides for social and societal security, as well as solidarity with victims of serious criminal offenses involving violence; protection of vulnerable groups and disenfranchised, and protection and promotion of human rights and gender equality. A new development is that this Law will respond to the needs of victims of violent crimes, by providing initial assistance (information and counselling) to cope with the consequences of the violent crime they survived. The law provides that representatives of all main stakeholders dealing with victims should join forces; an obligation to implement awareness raising and information activities for the public and for victims, to exercise their rights foreseen in this Law, through a single body. On the other hand, this Law imposes a duty to all actors who come into contact with the victim, at any stage in the procedure to provide to them all necessary information about the law, all necessary forms, information, guidelines on filling out the forms, as well as the competent body that can be approached to exercise that right.

The version of the draft-law published on ENER contained more substantial and more comprehensive solutions, compared to the text established by the Government, which includes comments from the Ministry of Finance. Main amendments pertain to reducing the amounts for compensation of material and non-material damage. This also limited the group of victims from the previously foreseen group of victims of crime, and therefore the Law focused only on victims of grave violent crimes. Hence the risk that the Law in practice will not be able to cover a number of vulnerable victims of violent crime, who would suffer from compromised physical and psychological health, but just because they do not qualify as grave, they could not receive compensation for the violence they suffered.

Law on Justice for Children (Measure 5.14)

This draft law is in development for quite some time already. It initially introduced harmonization of provisions of this Law with the new LFLA⁵⁶, and later, the work on a new law commenced. The working version of the Law is still in the process of drafting and communication with the main actors in the area. The reform aims to overcome the deficiencies identified in the implementation of the existing law and to harmonize it with the relevant EU acquis. During the entire process of working on the Law, the competent ministry established subgroups that worked in parallel on evaluating compliance with international standards. This appeared to be good practice to immediately start amending the text if some of the standards have not been observed, for any reason. Representatives of UNICEF are actively involved in the drafting, and they contribute towards improving the legislative framework for children – victims and introducing the so-called “Barnahus model” which prevents secondary victimization to which they are exposed in the regular procedure.

Law on Execution of Sanctions

The Law on Execution of Sanctions was adopted in 2019 and after its adoption, during 2019 and 2020, 15 secondary legislation items were enacted by the Ministry of Justice. Some of the secondary legislation items were adopted after the period foreseen as legal deadline, having in mind that according to Article 415 of the Law, secondary acts will be adopted within six months from the date of its entry into force.

⁵⁴ Minutes from 92nd session of the Government of Republic of North Macedonia, 27.7.2021. Item 45.

⁵⁵ <https://www.sobranie.mk/detali-na-materijal.nsp?param=eef0952-f67f-4e4e-8314-11e721e4a117>

⁵⁶ Law amending and supplementing the Law on Justice for Children (“Official Gazette of the Republic of North Macedonia” no. 275/2019)

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Despite the fact that this Law was adopted relatively recently, still after the information that several politically exposed individuals who were sentenced with a final court judgement, upon a previous plea bargain with the prosecutor's office, will serve the prison sentences in a penitentiary institution, and in order to reduce the possibility of such manipulation with legal provisions regulating the modalities of referral of sentenced individuals to serve the prison sentence, announced were new amendments to the Law on Execution of Sanctions. Therefore, the Minister of Justice, with a decision dated 16.06.2022 established a working group tasked with developing amendments to the Law on Execution of Sanctions, that need to address also other problems and solutions, and that are aiming at harmonization of the Law on Execution of Sanctions with the international standards in the area of execution of sanctions.

The working group started its work in July 2022, and then, in addition to establishing the working dynamics for the working group, it was decided to send requests to all basic courts and courts with extended jurisdiction in the country, asking them to make concrete proposals regarding the application of the Law on Execution of Sanctions, application of provisional release of sentenced prisoners, termination of sanction for sentenced prisoners, etc. This is a particularly good practice when developing legal amendments, precisely for the sake of inclusion of all courts and gathering data relevant for the evaluation of the specific problems and difficulties that the courts are facing. Still, such researches need to be made before the process of legislative amendments is initiated. Having in mind that the announcements for legislative amendments come after the information about politically exposed individuals who were sentenced to relatively short prison sentences (especially if one has in mind the nature of the crimes for which they had been sentenced), that they will serve their sentences in open prison wards, the impression is that the process of initiating amendments to the Law on Execution of Sanctions has started reactively, as a consequence of a specific case, and not as a realistically established need to amend the Law.

Recommendations

- Regarding the LCP, it is important to have timely planning of the volume of the process, as well as its duration, which would avoid setting unrealistic deadlines for preparation of the legislative amendments.
- Adoption of a new CC in order to introduce codification of non-criminal regulation in CC and its harmonization with European and international standards
- Harmonization of the Macedonian legislation with international instruments and EU acquis.
- Strengthening of the capacities of all stakeholders in the implementation of the new CC
- The Parliament should adopt, without delay, the Law on Payment of Financial Compensation to Victims of Violent Crimes
- Regarding the Law on Execution of Sanctions, it must be stressed that the civil sector was not included in the working group for amending this Law, and hence the recommendation that a representative of the Blueprint Group needs to be involved in the working group for amendments to this Law. With regards to this, we need to stress that it is necessary to involve the civic sector in these processes, especially when it comes to matters of interest for the public, such as the announced legislative amendments.

- APPLICATION OF THE LAP (MEASURES 5.2.2 TO 5.2.9)

Relieving the state attorney from participation in administrative disputes

LAP of 2019, with application from 2020 onwards, foresees a complete restriction of the role of the State Attorney's Office in administrative disputes. The State Attorney's Office can be a representative of public bodies in an administrative dispute, only if the Law on Public Attorney's Office and other substantive laws prescribes that the representative of a public body is the State Attorney's Office.

It is precisely this reduction in the role of representing the public bodies by the State Attorney in one segment also increases the efficiency from the perspective of reducing the duration of procedures for administrative disputes.

More frequent decisions of the Administrative Court in a dispute with full jurisdiction

The LAP of 2019 establishes an obligation for the administrative judges, when deciding for the second time on the same administrative law matter, to decide on the merit of the case, and they have the duty to resolve the administrative matter themselves, after which the judgement completely replaces the annulled individual act. Having in mind that the LAP was adopted with delayed application of 1 year, and its application commenced on 25.05.2020, this means that the number of cases on which complaints were filed again is, for the moment, very small. The same situation is reflected with regards to the High Administrative Court. On the other hand, the law itself should not allow for this legal obligation to become practice, since the role of administrative courts is not to replace the public bodies, but, instead, to act as their correctors and to establish judicial practice that will help in proper application of laws when resolving administrative law matters in administrative procedures.

Providing for enforcement of judgements in an administrative dispute

The LAP of 2019 foresees provisions of essence for the enforcement of decisions of administrative courts. Those provisions also foresee mechanism for fining authorised officials and officials of public bodies in a case when they fail to enforce the final decisions of administrative courts. Thus far, the administrative judges had not pronounced a fine for failure to enforce. This should be due to the fact that administrative courts have an insignificant number of judgments in full jurisdiction (on the merits), since it is only in that case that one could speak of enforcement.

Providing for public debates in an administrative dispute

The Administrative Court, since the beginning of application of the LAP, fully applies the principle of oral hearing, according to which the court, as a rule, will bring a decision in an administrative dispute on the basis of a public, direct and oral hearing.

Harmonizing the LAP with LGAP of 2015

The inconsistencies between LGAP and LAP remain a burning issue, especially the doctrinarian part of the new elements in LGAP. The administrative courts do not assess in full the application of LGAP which creates inconsistencies in its application. This can be seen from the fact that the administrative courts still have not taken a legal stance regarding the new development that the LGAP of 2015 introduced, which relates to the fact whether the contested administrative act was enacted by an authorized officer. This principle is a basis for full professionalization in the implementation of LGAP and establishing liability regarding the administrative acts adopted. Additionally, the administrative courts have not spoken about the communication between the first instance and second instance administrative bodies, which is mandatorily electronic, nor about issuing lists of evidence and attachment that the public bodies must send to the parties when they file an application to open administrative procedures.

Improving the spatial and material and technical conditions for operation of the Administrative Court

In 2022, the situation with the spatial conditions for operation of the administrative courts was resolved, which fulfilled the measure foreseen in the Strategy. In July 2022, the new court building for the Administrative Court was launched, providing the basic conditions for the work of the court. However, even despite this capital investment, still open is the issue of spatial conditions for the High Administrative Court remaining in the old premises, which do not meet even the minimum conditions for the judges to exercise the judicial powers, nor the judicial office from any aspect.

Recommendations

- It is necessary to foresee measures for implementation of continuing education of judges in the administrative courts on LGAP, particularly regarding the doctrine of the law.
- It is necessary to establish practice, through strategic lobbying, for execution of the judgements by using mechanisms for sanctions, in a case the decisions of administrative courts are not enforced by public bodies.

■ Laws from the area of civil substantive law (Measures 5.4.1-2, -3 and -4)

The Strategy foresaw a comprehensive legislative reforms in the area of civil-substantive law. The aim of the planned reform was generally set as “establishing a stable civil-law system by closing the existing legislative gaps and by its harmonization with the European standards and contemporary trends in the society. More specifically, the Action Plan stemming from the Strategy foresaw adoption of completely new laws on ownership and other real rights, obligations and inheritance. At a first glance, this deviated temporarily from the intention for overall codification of regulations in the area of civil law within one Civil Code, which was initiated by the Ministry of Justice in 2011.⁵⁷

Although it was planned, the process of drafting a completely new Law on Ownership and other Real Rights did not commence at all. In June 2019, the draft of the Law amending the Law on Ownership and Other Real Rights⁵⁸ the subject of which was limited to liberalization of real estate trade and to foreign nationals attaining real rights. Still, this document remained at the draft stage and was not endorsed as a legislative proposal by the Government.

In September 2019, the process of developing a new Law on Obligations commenced. The goal of the reform was, primarily, harmonization with relevant EU directives⁵⁹. Already in October 2019, the draft of the new LO was published⁶⁰. The draft contains new legislative solutions in line with EU directives, and also features a partial redacting of the text of some provisions. Otherwise, for the most part, provisions remained identical. This gives rise to the issue of a need of new law, having in mind that amendments encompass less than 1/3 of provisions. From the moment of publication at ENER, the procedure on developing a new 300 is still within the working group of the Ministry of Justice.⁶¹ A process of drafting a new Law on Inheritance had not commenced, although it was planned in the Strategy.

In July 2022, the Minister of Justice Nikola Tupanceski stated that the stalled process of codification of the civil substantive law would continue, which is substantial deviation from the initial idea to adopt three individual laws in this area.⁶² It is expected that, by drafting of the Civil Code, the overall substance in the area of civil law is regulated within one legal text in a comprehensive and systematized way.

⁵⁷ <https://www.pravda.gov.mk/vest/1212>.

⁵⁸ The draft Law amending the Law on Ownership and other real rights, published on ENER on 24.6.2019.

⁵⁹ Directive.2011/7/EU on combating late payment in commercial transactions, regarding punitive interest rates. Directive 2011/83/EU on consumer rights, regarding rights of passengers regarding travel contract. Directive 86/653/EEC on the coordination of the laws of the Member States relating to self-employed commercial agent, Directive.(EU) 2015/2302 on package travel and linked travel arrangements.

⁶⁰ Draft Law on Obligations published on ENER on 10.10.2019.

⁶¹ In 2021, upon a proposal of a group of MP-s, the Parliament adopted the Law amending the Law on Obligations (Official Gazette No. 215/2021). This intervention, that was primarily of social nature, limited the period during which interest is added. According to the legal amendments, when the amount of the accumulated interest that is not yet paid reaches the amount of the principal, the interest stops accruing. The intention of this amendment is to prevent excessive growth of debts, which affects disproportionately the individuals who live in poverty.

⁶² <https://vlada.mk/node/29538>

Law on litigation (Measure 2.4.1-5)

The working group attached to the Ministry of Justice in 2020 produced a text of a completely new Law on Litigation. The draft law was published on ENER in September 2020⁶³, after which more than hundred comments were received, which indicates there is significant interest of the professional public primarily, but also of civil organizations, regarding the proposed legal solutions. Additionally, in March 2021, a public debate was organized. The critique and comments received were taken into consideration by the working group and the text was finalized during that same month.

Government of Republic of North Macedonia adopted the draft-law on its 92nd session⁶⁴, and already at the beginning of August 2021 it was submitted to the Parliament⁶⁵. The draft law is still, one year after the submission, in the stage of first reading, reviewed by the working bodies of the Parliament and it had not been debated at a plenary session of the Parliament.⁶⁶ The draft law has been included in the agenda of the working bodies, but no discussion was opened upon it. In the absence of explanation why is the procedure “stuck”, one of the reasons could be that it is a law that is adopted by a two-thirds majority (since it regulates a court procedure) and which requires a general consensus between political parties or is a subject to certain political bargaining.

The draft law foresees a comprehensive reform in a significant number of legal institutes that are regulated by the Law on Litigation. According to its sponsor, the law is aiming at improving the litigation procedure, successful and efficient exercise of rights and interests of all participants in the procedure, and developing in further detail and harmonization of provisions from the Law on Litigation with other related laws.

The following ones can be highlighted as particularly relevant for the legal system, in addition to a large number of nomotechnical improvements and overcoming of inconsistencies in the legal text:

- » Harmonizing the writs in electronic format, as well as the evidentiary strength of documents in electronic format, with the relevant legal provisions on electronic operation in the country, as well as regulating the electronic delivery;
- » Referring to application of the LFLA in cases when the party to the procedure does not have funds to cover the costs of the procedure;
- » It is prescribed that the court can order expert testimony also without a proposal from a party, and deleted is the provision according to which the expert findings need to be submitted together with the complaint;
- » Upon an appeal, the first instance judgement can be rescinded only once;
- » The bases for revision are broadened i.e., it is always allowed also in litigations for protection from discrimination and in litigations for psychological harassment on the workplace (mobbing);
- » The value threshold for small claims is reduced;
- » A special procedure for protection of collective interests and rights is prescribed.

63 Draft law on litigation published on ENER on 28.09.2020.

64 Minutes from the Ninety-second session of the Government of the Republic of North Macedonia, held on 27 July 2021, item 48.

65 <https://www.sobranie.mk//materialdetails.nspix?materialId=d1d44644-0f3a-4f12-b3da-bea6154d4f87>

66 <https://www.sobranie.mk/detali-na-materijal.nspix?param=d1d44644-0f3a-4f12-b3da-bea6154d4f87>

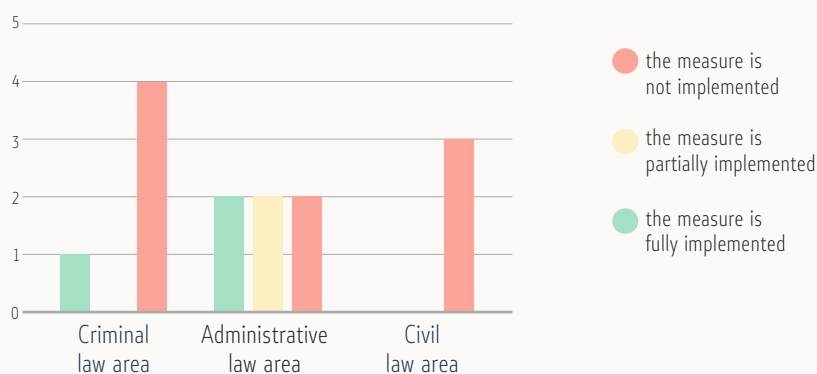
Law on Expert Evidence (Measure 5.4.2-1)

In September 2021 it was published on ENER that the process of preparation of a draft Law on Expert Evidence. No civil organizations were included in the working group to produce the draft text. The draft was published in February 2021.⁶⁷ The Government had not endorsed a draft law yet, and had not sent it to the Parliament. A key reform that is contained in the draft is abolishing the Bureau on Court Expert Evidence as a special body of the state that is performing expert evaluations. Additionally, it improves the legislative framework for the operation of the Chamber za Expert Witnesses, further regulates the provisions on disciplinary responsibility of expert witnesses, and makes an attempt to remedy other shortcomings.

Recommendations

- Due to importance that the civil substantive and procedural law has for both the economy and the everyday life of citizens, it is necessary to have a careful approach to the planning of reforms for the forthcoming period, and that they are based on sound proposals from the academia and renowned legal professionals and to be in line with the EU standards;
- the Parliament should not delay the adoption of the new Law on Litigation, in order to have a timely start for the large-scale activities necessary to prepare the capacities of the judiciary for its application;
- Reforms to the system for expert evidence must ensure, inter alia, access to expert witnesses for the beneficiaries of the right to free legal aid.

LEVEL OF IMPLEMENTATION OF MEASURES



⁶⁷ Draft Law on Expert Evidence published on ENER on 17.02.2022.

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Conclusions

Chapter 1: Strategic Objectives of the Judiciary Reform

1. INDEPENDENCE AND IMPARTIALITY

Inconsistencies identified in the operation and use of ACMIS over the past years were the reason to propose 4 (four) urgent measures that need to be addressed to overcome the identified inconsistencies and irregularities. Annual audits of the operation of ACMIS are carried out regularly, with hired independent auditors, and annual reports are produced according to the annual operational plan.

During the period covered by the Strategy, a new Law on Managing Case Flow in Courts was drafted and adopted, which exceeded the planned deadlines, but the measure is still noted as implemented.

The process of digitalization in the judiciary is carried out, in the past 12 months, via the Council for Coordination of Information and Communication Technology in the Justice System Bodies – ICT Council within the Ministry of Justice. The process of digitalization of judiciary is carried out in a partially transparent and inclusive manner.

The implementation of the Law on Court Budget, regarding securing of the prescribed minimum of 0,8% is still a serious problem which has a direct impact on the independence of the judicial power. Despite the fact that this problem is noted as a fundamental anomaly that creates an imbalance between the judicial power on the one hand, and the executive, supported by the legislative on the other hand, still this measure from the Strategy was not implemented.

The Minister of Justice, using the scope of his competences, established a working group to produce new Court Rules of Procedure. The group produced a text that is still not finalized, because it depends directly on provisions in several procedural laws, of which amendments are under way.

At the end of December 2021, the Supreme Court adopted the Rules of Procedure of the Supreme Court of Republic of North Macedonia, which establishes a new way of operation and organization of this court.

2. QUALITY

Part of the measures in the Strategy dedicated to harmonization of the judicial practice were implemented continuously, over the entire period.

Regarding publication of court decisions, this process is running smoothly, and all court decisions are published on the courts' web portal sud.mk, but the process itself is not structured to provide user-friendly access to decisions.

Harmonization of the judicial practice continued with the same intensity, beginning in 2017, without exception even during the time of COVID 19, and the working meetings for its harmonization are taking place at least once a year, and the minutes and conclusions stemming from them are regularly sent to the lower courts and are published on the web-site of AJPP, as an organizer of the event.

The new Law on JCRNM, as well as the adoption of several secondary law items produced with assistance of external experts fulfilled the measure on clear and reasoned decisions for election and promotion of judges, and despite the delay in the adoption of such secondary legislation and documents. It can be concluded that JCRNM devoted a long time in preparatory activities for implementation of the evaluation of judges and of presidents of the courts, since it is a complex and complicated process of evaluation, but it had a negative impact on the promotion of judges, where procedure was opened and it is still not implemented to the end. A rather significant legal amendment is that the decisions for election of judges and presidents of courts and promotions of judges are sent to all candidates.

The trend continues of the CPPRNM failing to publish on its web-site, in the public domain, decisions for election and promotion of public prosecutors, as well as other decisions adopted by it. With regards to the modalities for election of public prosecutors, the practice continues of electing them without a discussion, just by voting FOR and AGAINST.

Although the personnel and technical equipping, as well as provision of adequate premises for the AJPP, is of outstanding importance, still, adequate premises have not been provided yet; in terms of personnel equipping, over the last five years a small increase in the number of staff under permanent or temporary employment contract can be observed in the AJPP, but it can be concluded that the numbers are still far from full personnel levels as provided by the presently applicable Rules on Systematization of Jobs, which foresees a total of 50 jobs; while in terms of the budget allocated to the AJPP, in the last five years there is fluctuation of the amounts approved on an annual level, and in 2022 a significant increase in the allocated annual budget is observed.

In 2018, amendments to the existing Law on AJPP were adopted. The pandemic slowed down the process of election of new candidates for trainees at inception training within the seventh and eighth generation of trainees, and after the admission ceremony for the eighth generation, it was concluded that it would not be sufficient to fill the vacancies. Although the adoption of a new Law on AJPP was not foreseen directly as a measure in the Strategy, it is necessary. Still, for the moment, a new Law on AJPP is not accepted well by the opposition, so it still remains in the parliamentary procedure.

The crucial challenges for establishing an efficient probation system was the very small number of cases, which started growing in the recent years. Additionally, one could notice the need to strengthen the capacities of probation officers, judges, as well as the staff in penitentiary institutions, who work on resocialization. In 2021, a special Strategy for Development of Probation Service (2021-2025) was adopted, and in 2022 the process of amending the Law on Probation started.

Since the adoption of the Strategy, to this day, there have been no significant activities to improve the situation with human resources in the judiciary, and in 2022 a complete distortion of human resources happened, since the amending of the Labour Law ("Official Gazette of Republic of North Macedonia" No. 151/2021) lead to retiring of 14% of the total number of judges in Republic of North Macedonia.

In order to develop the new Law on Judicial Service, a working group was established, and it had only one meeting thus far, in February 2021, and at this moment there are no future scheduled meeting of the working group.

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3. RESPONSIBILITY

Despite the fact that the Law on JCRNM of 2019 provided, for the first time, a possibility for judges to submit directly a request to initiate a procedure for disciplinary responsibility for a member of JCRNM whom they have elected, thus far there was no application to initiate a procedure of disciplinary responsibility for a member of JCRNM. Regarding one current member of JCRNM, the Prosecutor's Office for Prosecuting Organized Crime and Corruption filed an indictment, after which the JCRNM lifted the judicial immunity, but did not initiate a procedure for their temporary suspension for performing the office of a member of JCRNM. In the meantime, this member was removed from the judicial office and the office of a member of the JCRNM, because he met the conditions for old-age retirement.

Amendments to the Law on Courts redefined the grounds for removing of a judge, indicating specifically what is considered a more serious disciplinary offence which makes them unsuitable to perform the judicial office, as well as unprofessional performance and dereliction of judicial duty, and also defined precisely the conditions to pronounce a disciplinary measure for a disciplinary offence that was committed.

The Law on the Council Establishing the Facts and Initiating and Procedure to Establish Responsibility of a Judge, with amendments, was abolished in January 2018, which transferred once again the overall competence for the responsibility of judges and presidents of the courts to the JCRNM.

The involvement of the Association of Judges of Republic of North Macedonia in monitoring of procedures for deciding on disciplinary responsibility is foreseen in the Law on JCRNM, in order to ensure greater transparency when carrying out the procedure for responsibility of a judge/president of court.

With regards to the responsibilities of public prosecutors, it is necessary to mention that, when deciding on a certain disciplinary case, CPPRNM previously issues a decision excluding the public from the procedure, and for that reason there is no possibility to monitor the entire procedure. In the recent period, the CPPRNM removed one public prosecutor from the Basic Public Prosecutor's Office in Tetovo, on the grounds of a serious disciplinary offence.

4. EFFICIENCY

The measure of monitoring the efficiency of the judiciary is directly linked to the application of the Law on JCRNM, which foresees establishing, within the JCRNM, a Centre for information and communication technology, analytics and statistics. This measure was not implemented, having in mind that JCRNM had not established a functional centre.

According to the Strategy, improvements to capacities of judicial and prosecutorial service should be achieved through harmonization of laws that deal with judicial and prosecutorial service with the Law on Public Sector Employees and The Law on Administrative Servants. The proposed amendments to the Law on Judicial Service and The Law on Prosecution Service achieve equality of employees in the private and the public sector, by establishing the same amount of legal minimum salary and harmonization (in tiers) of other salaries of judicial servants and of public prosecutorial servants at all levels, and to secure a continuity of changes to salaries in the judicial administration and in the prosecutorial administration, in relation to the minimum salary on the national level. Still, the proposed laws amending the Law on Judicial Service and the Law on public prosecutorial service, in a shortened procedure, were still not adopted, despite the fact that deadlines have long been exceeded.

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5. TRANSPARENCY

The measure of establishing clear criteria, rules and procedures for publicity of sessions of JCRNM was formally completed, by the adoption of the new Law on JCRNM in May 2019. It improves the criteria and procedures for publicity of sessions. In the course of implementing the Strategy, members of JCRNM, as well as the staff responsible for public relations, attended trainings; adopted were also strategic documents which provided a basis for a transparent JCRNM, but the lack of technical support and lack of proactive initiative by the managerial structures of JCRNM lead to a situation where not even some of the legal obligations are implemented in full.

A positive change in the working modalities of JCRNM after the adoption of the new law is the way it informs about election, promotion or removing of judges and presidents of courts, as well as about decisions to establish disciplinary responsibility. The procedures for removing of a judge or president of court that are initiated according to the new legislative solutions are running significantly faster, and the procedure takes less time, so it could be said that in the last year, JCRNM shows greater efficiency in terms of such procedures.

The analytics department within JCRNM was established immediately after the adoption of the new Law on JCRNM, but because of difficulties in receiving consent for new employments of adequate professional staff, JCRNM reallocated some of the staff to perform this duty. It was only in the first half of 2022 that an ad was published to employ the adequate profile of staff and strengthen the human resources of this department.

The new Law on JCRNM prescribed the contents of the Annual Working Programme of JCRNM by enumerating all parameters that it should contain. Hence, the contents of the annual report of JCRNM is legally prescribed, and prescribed is also the deadline to adopt the Annual report of the JCRNM. The form for the report, which is determined by the Committee for Political System and Relations Between Communities in the Parliament of Republic of North Macedonia, is used regularly by the JCRNM.

The revision of the Methodology for Court Statistics, in terms of the form for annual reports with regards to the format for annual reports can be considered fulfilled, since the JCRNM had for some time already established a practice of uniform reports on the work of the courts. The reports on the operation of courts are produced on a quarterly basis, they are adopted by the JCRNM and on the basis of these reports, it follows the dynamics of the work of judges and the courts and identifies if they are diligent or not. An annual report on the work of courts is produced as well, it is adopted by the JCRNM, and it is the basis for the development of the Annual Report of JCRNM. Still, sometimes it happens that the data do not correspond, and there are problems with the way in which the courts register cases, such as outdated cases, cases tried by the president of the court, etc. This problem is technical in nature, but it persists for years, and it will be overcome by the upgrade of the ACMIS and by the courts filling out the reports more carefully.

CPPRNM, on its web-site publishes the dates for its sessions in a timely fashion. In terms of minutes from sessions, they are partially published. In terms of communication with the public, it is concluded that CPPRNM has appointed a public relations officer, but the web-site of CPPRNM does not feature public contact details of that individual. Annual reports of CPPRNM are published and easily available from their web-site, but what is of concern is the non-transparent publication of the budget of CPPRNM. The last data published on the financial operation of CPPRNM date back to 2017.

6. ACCESS TO JUSTICE

For the purposes of developing amendments to the Law on Attorneys, the Ministry of Justice, in November 2019 established a working group, which started working on the amendments one year later. In July 2021, the text was endorsed by the Government and sent to the Parliament for deciding, and it is in the stage of first reading.

The adoption of the new Law on Mediation, in December 2021, exceeded the deadline established in the Action Plan to the Strategy, according to which this law was supposed to be adopted in June 2019. During 2022, on the basis of the new Law on Mediation, adopted and published were several secondary legislation items, including the Charge Rates (tariffs) za mediators. In the second half of the year, the first National Coordinator for Mediation was elected, after which the election of members and secretary of the National Council for Mediation followed.

LFLA was adopted in May 2019, and its application commenced on 1 October 2019. The Law prescribed new elements and it was expected that they would have a positive impact to improve the right of natural person to have access to justice and equitable judicial protection. Over the course of 2021, the application of LFLA intensified, which made it possible to identify certain problems and challenges in its application. The Law is restrictive regarding access to legal aid and exemptions from costs in procedures before notary public and enforcement agents, and also does not foresee legal aid for certain issues that individuals who live in poverty are facing.

7. REFORMS RELATED TO SPECIAL JUSTICE SYSTEM INSTITUTIONS

In 2018 and 2019, the Ministry of Justice produced the Analysis of the court network in Republic of North Macedonia, which was presented before the Council for Monitoring of the Implementation of the Strategy. The Analysis, inter alia, indicates that, in line with the overall economic situation in the country, it is not recommended to abolish courts, but to transform them into judicial departments of other courts; however, the amendments to the Law on Courts that had the aim of introducing optimization of the court network, by reducing the number of courts by 20%, did not reduce the number of courts in the country.

The Law on Public Prosecution was adopted in February 2020 and its application commenced on 30.06.2020. It is evident that there is no progress regarding the establishing of investigative centres in public prosecutor's offices, and therefore during this period, the only investigative centres in operation are those established in 2018. The system for electronic case management in public prosecutor's offices was not established and is not used. Regarding the work of the public prosecution across the entire territory of the country, it is necessary to note that the retiring of 10 public prosecutors, in the period before 30.06.2022, in line with the Labour Law, has an impact on the efficiency in the work of public prosecutor's office.

Chapter 2: Reforms in individual areas

CRIMINAL LAW AREA

In December 2020, a broad working group was established, to develop the new CC, and its work resulted in an initial, draft version of the Code, in 2021, while in 2022 the draft of the new CC was published on ENER. In addition to working on a completely new CC, in the first half of 2021, the Ministry of Justice produced, and the Government endorsed the Draft Law amending the existing CC. The draft law was submitted to the Parliament in August 2021, but it is still not adopted.

The Strategy foresaw drafting a Law amending the LCP, but since the amendments to the legislative text are extensive, it actually amounts to adoption of a completely new LCP that will comprise amending more than two thirds of the text of the existing LCP. The working group dealing with these amendments is convened with a decision of the Minister of Justice on 01.04.2021. The last meeting of the working group was in May 2022, and it will continue working in the forthcoming period, starting in September 2022, and the draft text should be produced towards the end of 2022.

the Government, in July 2021, endorsed the text of the draft Law on Payment of Financial Compensation to Victims of Violent Crimes. The draft law was submitted to the Parliament and after one year it is in the stage of second reading. The version of the draft law published on ENER contained more substantive and more comprehensive solutions, compared to the text endorsed by the Government which includes the comments from the Ministry of Finance. Main amendments are related to reduced amounts of compensations for material and non-material damage.

The draft text of the Law on Justice for Children is in development for quite some time. It primarily provided harmonization of provisions of this Law with the new LFLA, and then the work on a new law commenced. A working version of the Law is still in a process of drafting and communication with the main actors in the area. During the entire process of drafting the Law, the competent ministry established subgroups that worked, in parallel, assessing the compliance with the international standards. This turned out to be a good practice to immediately begin with amending of the text, if some of the standards have been overlooked, for any reason.

The Law on Execution of Sanctions was adopted in 2019 and after its adoption, in 2019 and 2020 the Ministry of Justice adopted 15 secondary legislation items. The Minister of Justice, with a decision of 16.06.2022, established a working group tasked with developing amendments to the Law on Execution of Sanctions, that need to address other problems and solutions, that are aiming at harmonizing the Law on Execution of Sanctions with the international standards in the area of execution of sanctions. The working group started its work in July 2022.

ANALYSIS

ADMINISTRATIVE LAW AREA

The LAP of 2019, applied since 2020 foresees complete restriction of the role of the State Attorney's Office in administrative disputes. It is precisely the reduced role of representing public bodies by the State Attorney to some extent increases the efficiency from the perspective of reducing the duration of procedures in an administrative dispute.

The LAP of 2019 establishes an obligation for the administrative judges, when deciding for the second time on the same administrative law matter, to decide on the merits, and they have the duty to resolve the administrative matter themselves, whereby the judgement completely replaces the individual act that was repealed. The law itself should not allow for this legal obligation to become practice, because the role of administrative courts is not to replace the public bodies, but to be their correctors and to establish court practice that will assist in proper application of laws in resolving administrative law matters in administrative procedures.

The LAP of 2019 foresees, for the first time, essential provisions related to enforcement of the decisions of administrative courts. These provisions foresee a mechanism for fines of authorised officers and officials of public bodies, in case they fail to enforce the final decisions of administrative courts. Thus far, the administrative judges had not pronounced a fine for failure to enforce. This is probably due to the fact that the administrative courts have an insignificant number of judgments in full jurisdiction (on the merits), since it is only in that case that one could speak of enforcement.

The Administrative Court, since the beginning of application of the Law, applies in full the principle of oral hearing, in line with which the court, as a rule, adopts a decision in an administrative dispute on the basis of public, direct and oral hearing.

The lack of harmonization between LGAP and LAP remains a burning issue, particularly in the doctrinarian part of the new elements in the LGAP. Administrative courts do not assess in full the application of LGAP, which creates inconsistencies in its application.

In 2022, the situation with the spatial conditions for the work of the administrative courts was resolved, which fulfilled the measure foreseen in the Strategy. In July 2022, the new court building of the Administrative Court was launched, and it provides the basic prerequisites for the operation of the court. However, despite this capital investment, the issue of spatial conditions for the High Administrative Court remains open, since it remains in the old premises that do not meet even the minimum prerequisites for the exercise of judicial office.

ANALYSIS

CIVIL LAW AREAS

The Strategy foresaw a comprehensive legislative reform in the area of civil substantive law. More specifically, the Action Plan to the Strategy foresaw adoption of a completely new laws on ownership and other real rights, on obligations, and on inheritance. At a first glance, this is a temporary deviation from the intention for a comprehensive codification of regulation in the area of civil law, within Civil Code, the initiative that was raised by the Ministry of Justice in 2011.

Although it was planned, the process of drafting an entirely new Law on Ownership and other Real Rights did not begin at all. In June 2019, the draft of the Law amending the Law on Ownership and other Real Rights, but this document remained at the level of draft, and was not endorsed as a legislative proposal by the Government.

In September 2019, the process of drafting a new Law on Obligations and in October 2019 the draft of a new LO was published. Since the publication at ENER, the procedure for developing a new LO is still with the working group attached to the Ministry of Justice.

The process of developing a new Law on Inheritance had not started, although it was planned in the Strategy.

In July 2022, the Minister of Justice Nikola Tupanceski stated that the stalled process of codification of the civil substantive law will continue, which is a substantial deviation from the initial idea to adopt three individual laws in this area. With the development of the Civil Code, it is expected that the entire substance in the area of civil law is regulated within legal text, comprehensively and systematically.

The working group attached to the Ministry of Justice produced, in 2020, the text of a completely new Law on Litigation. The draft law was published on ENER in September 2020, after which several comments arrived, and a public debate was organized in March 2021. The Government of Republic of North Macedonia endorsed it as a legislative proposal on its 92nd session, and at the beginning of August 2021 it was submitted to the Parliament. The draft law is still, one year after the submission, in the stage of first reading, reviewed in the working bodies of the Parliament and was not debated at a plenary session of the Parliament.

In September 2021 it was published on ENER that the process of developing a draft law on Law on Expert Evidence was beginning. The draft was published in February 2021.

